

GOVERNMENT OF INDIA ACTS

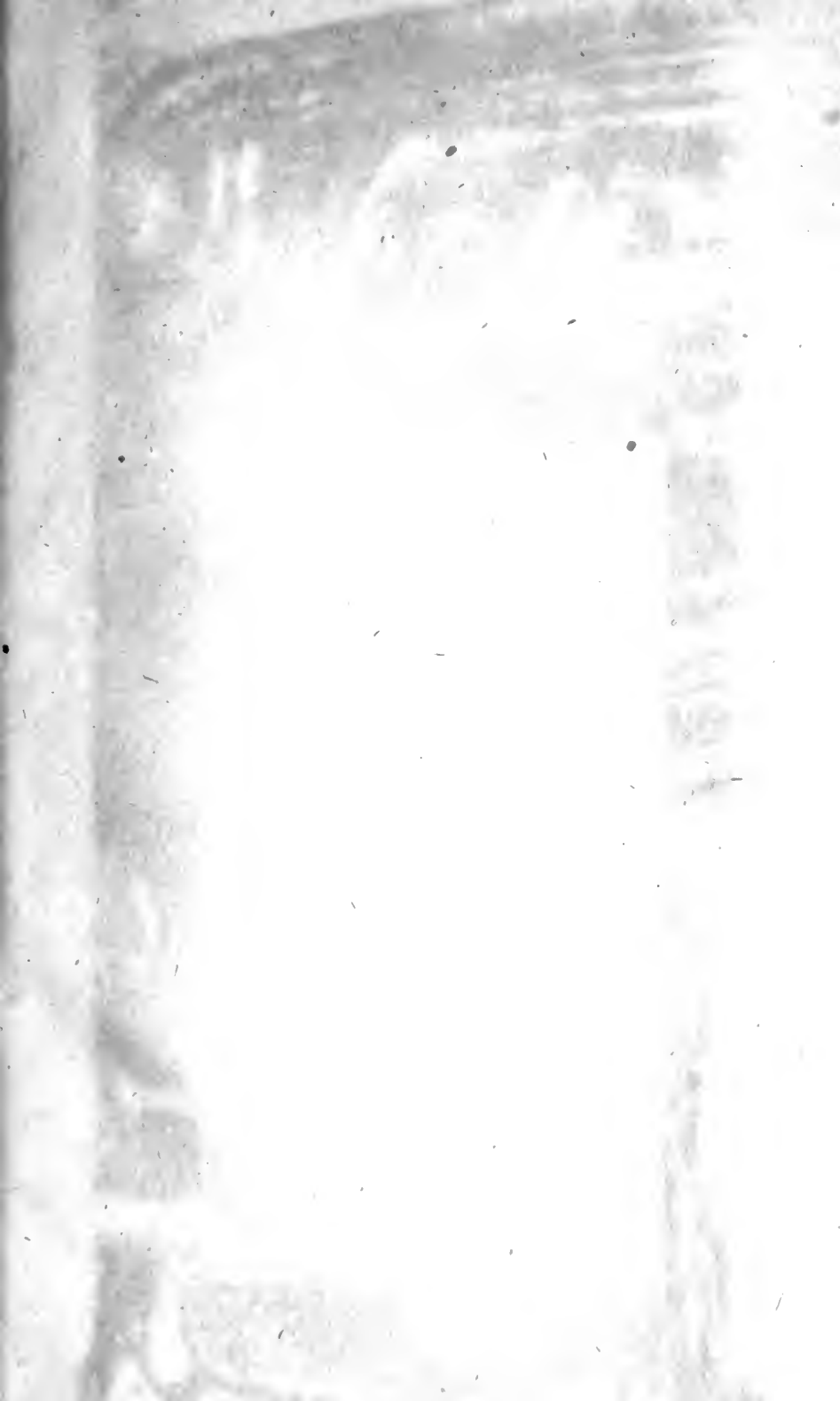
1915 & 1916.

P. MUKHERJEE, M. A.

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Indian Citizen Series.

Indian Constitutional Documents

VOL. II

CONTAINING

The Government of India Acts, 1915 & 1916

*Including references to older statutes together
with an Introductory account of the
present working Constitution of
British India and a brief
preliminary study of
English political
institutions*

BY

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PREFACE.

Some explanation is necessary for publishing the Second Volume of my "*Indian Constitutional Documents*" prior to the publication of the first volume. In view of the great interest that is now being taken by the public in the discussion of Indian constitutional questions, I think it is desirable that the public should have, easily accessible to them, a handy compendium describing the present law and custom of the Indian Constitution. It has been my aim in this volume to introduce the reader to the fundamental law of the Indian constitution embodied in the Government of India Acts, 1915 & 1916 and with a view to attain this end, I have given a brief, but full, accurate and up-to-date account of the present working constitution of British India. As a preliminary to the study of the British Indian Constitution and as an aid to its proper understanding, I have also described briefly the main outlines of the English Constitution. As the Act of 1915 is a Consolidation of older statutes, I have given full references to them and have included them in the first volume (*now in the press*).

The Introduction to the present volume and that to the first volume will together give a complete account of the British Indian Constitution—its past history and its present condition.

I should be failing in my duty if I did not gratefully acknowledge the invaluable help rendered to me by my revered father, Babu Lalmohan Mukherji, author of "*Indian Case-Law on Ejectment*" in the preparation of this volume.

Presidency College, Calcutta. }

June 15th, 1918.

P. MUKHERJI.





The Government of India Act, 1915

With amendments up-to-date and references to older statutes together with an introductory account of the present working constitution of British India and a brief preliminary study of English political institutions.

INTRODUCTION.

PART I.

A brief study of English Political Institutions.

By the "constitution" of a state we mean those of its rules or laws, written or unwritten, which determine (a) the form of the organization of its government, (b) the extent of power entrusted to its various organs and (c) the manner in which these powers are to be exercised.

In some countries the rules or laws which make up the constitution can be enacted and amended by the ordinary legislature just like any other laws, while in other countries such rules or laws are placed above and beyond the power of the ordinary legislature and are capable of being enacted and amended only by some superior legislative authority or by a process different from that employed in enacting and amending ordinary laws.

A constitution of the former kind, capable at any moment of being amended or repealed, has been properly styled by Lord Bryce as a "Flexible" constitution of which we have an instance in the English Constitution. Such a constitution proceeds from the same authority which makes the ordinary laws; and it is repealed in the same way as ordinary laws. Indeed in such a case the term "constitution" denotes nothing more than such and so many of the statutes and customs of the country as determine the form and arrangements of its political system. And it is difficult to say of any particular law whether it is or is not a part of the political constitution.

A constitution of the latter kind proceeding from a source different from that whence spring the other laws, capable of being amended or repealed in a different way, and exerting a superior force has been aptly styled by Lord Bryce as a "Rigid" constitution of which we have instances in the constitution of the United States of America, the English self-governing colonies and British India.* Such a constitution is enacted not by the ordinary legislative authority (which in the case of British India is the legislative council of the Governor-General of India) but by some higher or specially empowered person or body (which in the case of British India is the King in concurrence with the House of Lords and the House of Commons or, shortly speaking—the King in Parliament). If it is susceptible of change, it can be changed only by that authority or by that special person or body. When any of its provisions conflict with a provision of the ordinary law, it prevails and the ordinary law must give way.

The constitution of British India falls under the class of Rigid Constitutions because it is based on a series of royal charters and Parliamentary statutes which cannot be amended or repealed by the ordinary legislature in India *viz.* the Legislative Council of the Governor-General. The only body which can amend or repeal them is the King in Parliament—the sovereign legislature of the British Empire. In studying Indian political institutions we find constant references not only to the King and the Parliament (including the House of Lords and the House of Commons) but also to other great English political institutions such as the Privy Council, the great political parties, the ministry and the cabinet. There cannot, therefore, be a proper understanding of the British Indian constitution without a preliminary study, however brief, of the English constitution. We therefore proceed to describe briefly the main outlines

* The Indian law codes contain two definitions of cardinal importance. One is "British India", the other "India". "British India" means all places and territories within the King's dominions which are governed by him through the Governor-General in Council. "India" includes British India "together with any territories of any native prince or chief under the suzerainty of His Majesty, exercised through the Governor-General in Council". "British India" is under direct British rule, the portion outside British India which yet—is India is not under direct British rule. It is occupied by native princes or chiefs whose position as regards the Crown is that of an inferior power to the suzerain or paramount power.—*Sir T. W. Holderness*. In this book we are chiefly concerned with "British India" as defined in the above extract.

of the English Constitution, in so far as they have a bearing on the proper understanding of the British Indian constitution.

The nature of the English Constitution—The constitution of England is, as we have seen, a Flexible one ; it can be understood only by reference to the following classes of authorities :—

I. Written documents of the nature of solemn engagements made at great national crises between persons representing opposed political forces. Such are the Magna Charta* (1215) and its several confirmations and amended editions* and the Petition of Right granted in 1628 by Charles I.†

II. Statutes like the Habeas Corpus Act¹, the Bill of Rights,² the Act of Settlement,³ the Reform Acts (1832-67-84),⁴ the Parliament Act (1911)⁵.

* The chief provisions of the Magna Charta are—(1) that all accused persons are to be tried by their peers ; (2) that no taxes are to be imposed without the consent of the Great Council of barons and tenants-in-chief, (3) that there shall be no imprisonment without lawful trial, and no delay or sale of justice.

† The Petition of Right denounced as illegal the levying of gifts, loans or taxes without parliamentary consent, the imprisonment of persons without cause shown and the billeting of soldiers and sailors on householders against their will.

¹ *The Habeas Corpus Act, 1679*—lays down that a person, detained on a criminal charge without being brought to trial, or unlawfully detained by private individuals, will have to be brought, by the commanding governor of the gaol or by the person detaining him, before the court for investigating the reasons of his detention, if any one, on his behalf, apply to a judge of the High Court for a writ of Habeas Corpus.

² *The Bill of Rights, 1689*—declares acts such as levying money and keeping a standing army without the sanction of Parliament, as illegal, and states that the subjects have a right to petition the King and that Parliaments should be freely elected, frequently held and should enjoy freedom of speech. It also declares that the exercise of the power of suspending laws or dispensing with them by regal authority, without the consent of Parliament, is illegal. It enacts that "for the safety and welfare of this Protestant Kingdom," all persons "who profess the popish religion or marry a papist shall be incapable to inherit or possess the crown."

³ *The Act of Settlement of 1701*—settles the crown of England, after Anne's death on Sophia, electress of Hanover and her heirs being Protestants. It also lays down, among other things, that (a) all future kings are to be members of the Church of England ; (b) no foreigner is to hold grants or office, or to sit in Parliament ; (c) judges are

III. Authoritative Judicial Decisions, as those on the Rights of Jurymen, on the Prerogatives of the Crown, on the Privileges of the Houses of Parliament and of their members, and on the rights and duties of the Police.

IV. Parliamentary Precedents as recorded in Reports of Committees of both Houses, in the writings of authoritative commentators on Parliamentary usage, and in the reported Debates and Proceedings of both Houses.

The Sovereign—The Supreme Executive in the British Empire is the Sovereign and a body of ministers appointed with his consent. The Sovereign may be a King or a Queen. In official documents the King is described as—

‘George, by the Grace of God of the United Kingdom and Ireland and of British Dominions beyond the Seas, King. Defender of the faith. Emperor of India.’

He holds office for life, subject to the conditions of the Act of Settlement which requires that he shall be a descendant of Princess Sophia of Hanover, a Protestant member of the Church of England, and married only to a Protestant. The rule of succession is hereditary, following the law of primogeniture.

“The King can do no wrong.” His ministers are responsible personally for his public acts. In his private capacity “he cannot inflict an injury on a subject, nor is he personally amenable to the procedure of any court of law.” The only remedy against the sovereign personally is by Petition

to have fixed salaries and only to be removed from office by petition of parliament; (d) no royal pardon can be pleaded as an answer to an impeachment.

⁴ *The Reform Acts of 1832, 1867 & 1884*—together have made man, instead of land, the holder of suffrage and have distributed representation according to population: they have thus made the House of Commons truly representative and national.

⁵ *The Parliament Act of 1911*—enacts as follows—(a) the Lords shall have no power of rejecting or amending a money bill; (b) any bill, other than a money bill, passed by the Commons in three successive sessions and rejected by the Lords in those sessions, becomes law if two years have elapsed between the second reading in the first Commons session and final passing in the third Commons session; (c) the duration of Parliament is limited to five years.

of Right which is available only in cases in which the sovereign's title to lands or goods is disputed. It is held to be of the sovereign's mere grace and free will that the proceedings are allowed. The petition is granted in the form—'Let Right be done', and then the investigation follows the course of an ordinary civil trial before the superior courts of law.

Parliament cannot be assembled, adjourned or dissolved except by his express command. At the commencement of a new Parliament, he delivers, either in person or by a commissioner duly authorized for that purpose, a speech declaring the cause of the summons, giving a general, though not very definite, sketch of the sort of measures which his Ministers will introduce into Parliament in the course of the session, and noticing briefly any important facts in current foreign politics or in the domestic annals of the Royal Family.

Bills passed by the Houses of Parliament must receive the assent of the sovereign in order to become a law. But "since the time of Queen Anne no English king has ever refused assent to a Bill. For, under the modern constitutional rule, the King must, in matters such as this, act in accordance with the advice of his ministers, and his ministers can practically prevent any bills, which in their opinion ought not to become law, from reaching the stage at which the king's assent is required." (*Ilbert*).

The sovereign can formally express his wishes by means of orders in Council or Proclamations, but these are only made subject to the assent of Parliament and are revocable by statute. At the present day all Proclamations derive their ultimate authority from Parliament. In case of emergency, the ministry would advise the Crown to issue a Proclamation on its own authority and would endeavour to pass a Bill of Indemnity as soon as Parliament met.*

* In 1766 Lord Chatham's ministry interfered by Proclamation with the export of wheat, in order to meet the scarcity caused by a bad harvest. When Parliament met, an Act of Indemnity was passed after 'acrimonious debates.' Again, in 1876, it was only after a heated debate in the House of Commons that the Proclamation issued by H. I. M. Queen Victoria before the passing of the Royal Titles Bill announcing her assumption of the title of "Empress of India" was ratified by Parliament. Once again, on March 16th, 1915, the House of Lords voted an Address to the Crown asking that the Royal consent should be withheld from the Proclamation (for the creation of an Executive Council for the United Provinces) which had, according to the Indian Councils Act of 1909, been laid on the tables of the House of Lords. It is evident, therefore, that those Proclamations which have not been questioned by Parliament or superseded by Acts of Parliament have behind them the full authority of Parliamentary sanction.

He has sole power of coining money, of appointing all officers in the army and navy, judges, ambassadors, the governors-general of India, Canada, the Australian Commonwealth, and the Union of South Africa, Colonial and Indian Governors, bishops and archbishops of the Established Church. He has the power of vetoing all Acts of Colonial and Indian legislatures. He has sole power of granting Charters (as Queen Elizabeth did to the East India Company in 1600) and degrees of nobility, of concluding treaties of any kind, of making war and peace with foreign states and of granting pardon to any particular offender. He has also sole command of the army and the navy.

Briefly speaking, the sovereign "is at the same time the supreme executive, a co-ordinate legislative authority, the fountain of justice and of honour, the supreme governor of the church, the commander-in-chief of the army and navy, the conservator of the peace, and the *parens patriæ* and *ex-officio* guardian of the helpless and the needy. In law all land is held directly or indirectly, of him. Parliament exists only by his will." Lastly we should note that the Crown is the symbol of imperial unity: as Professor Lowell has pointed out, "the crown is the only visible symbol of the union of the Empire and this has undoubtedly had a considerable effect upon the reverence felt for the throne."

The Privy Council is nominally an assembly of advisors to the Crown. Its main duty now is to advise the Crown as to the issue of ordinances, which are known on that account to the English law as Orders in Council. During the last hundred years the Council has been nominated by the sovereign on the advice of the ministers. Its members are the only constitutional advisors of the Crown, and it is only as members of the Privy Council that the various ministers are permitted to advise the Crown. There is no limit to the number of its members. Every British subject¹ is eligible to appointment. Its members are appointed for life and bear the title of "Right Honorable" and take precedence after Knights of the Garter. Each member has to take an oath to give advice according to the best of his discretion, and for the King's honour and public weal: to keep the king's counsel secret: to avoid corruption: and to act in all things as "a good and true councillor ought to do to his sovereign Lord." (*Blackstone*).

¹ Indians, as British subjects, are also eligible to be admitted to membership of the Privy Council. The Rt. Hon'ble Mr. Ameer Ali is the only Indian so far admitted.

Of late years membership in the Privy Council has been conferred as a sort of decoration for services in politics, literature, science, arts, administration or war. Its *personnel* includes among others—the royal princes and the archbishops, the great officers of state and of the royal household, the Speaker of the House of Commons, the ambassadors, the principal colonial governors, colonial statesmen and certain high judicial officers. It is presided over by an officer who is called the Lord President of the Council: he manages the debates in the Council, puts proposals from the Sovereign for discussion at the Council table and reports to the Sovereign the resolutions adopted thereon.

As a matter of actual practice the general body of the Privy Council has ceased to exercise its ancient functions of advising the sovereign ever since the principle of government by cabinet was introduced in the reign of William III. It is understood that now only those privy councillors attend its meetings who are specially summoned for the purpose of advising the sovereign at whose residence meetings are held once in 3 or 4 weeks. The quorum is fixed at six with the clerk whose signature is authentication of its deliberation. The Privy Council is still, however, in theory the only instrument through which the sovereign can exercise his prerogative (meaning, according to Dicey, "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the Crown"), being the only body of ministers recognized by law, and retains certain powers of quasi-legislation *e.g.*, the issuing of Orders in Council. The only occasion on which the Privy Council assembles as a body is that of proclaiming a new sovereign.

The Privy Council does real work to-day only through certain small committees or select bodies of Privy Councillors (*viz.*, the Judicial Committee, the Board of Trade, the Board of Education and the Local Government Board) which are of considerable importance. But it is only one such committee which has an important bearing on the British Indian constitution *viz.* the Judicial Committee of the Privy Council. This committee was constituted in 1833, by an Act of Parliament called—"An Act for the better Administration of Justice in His Majesty's Privy Council" (3 and 4 Wm. IV., C. 41.) to hear appeals to His Majesty in Council "from the decisions of the various courts of judicature in the East Indies and in the plantations, colonies and other Dominions of His Majesty abroad". By this Act, therefore,

the Judicial Committee of the Privy Council is the Supreme Court of Appeal for British India and the British Colonies.

The members of this Court, as privy councillors, are appointed by the Crown. They are subject to dismissal by the Crown and to impeachment by Parliament. Except in case of their death, resignation, dismissal or impeachment, at an earlier date, they hold office for the life of the royal person appointing them and for six months subsequent to his or her decease. The statutes (3 and 4 Wm. IV., C. 41 and 34 and 35 Vict. C. 91) require that the committee shall be composed of those privy councillors who are, for the time being, Lord President of the (Privy) Council and Lord Chancellor, those who fill or have filled high judicial offices, and of two other councillors specially designated by the Crown; also that from those councillors who have filled judicial offices in India or the Colonies, two shall have seats in the Committee. These last four receive remuneration.

The jurisdiction of this Court is chiefly appellate. Appeals are taken to it from the Court of Arches (an ecclesiastical Court for the trial of ecclesiastical cases) at Canterbury, from vice-admiralty courts abroad, from the Isle of Man, the Channel Islands, British India, and the colonies generally. This appellate jurisdiction is almost wholly regulated by statutes and the proceedings are in the form of a petition to the Crown in whose name the judgment is delivered. This illustrates the truth of the saying that "the king is the fountain of justice" which means that it is the prerogative of the Crown to dispense justice to the subjects. The sovereign is presumed to be present in every British Court and to decide cases. The king is not the "author" but the "distributor" of justice. "He is not the spring, but the reservoir from whence right and equity are conducted by a thousand channels to every individual."

The Ministry—The word "Ministry" is of wider meaning than the word "Cabinet". The Ministry consist of all those executive officers who have seats in Parliament. It is composed of an inner part that formulates the policy of government and an outer part that follows the lines laid down; the inner part is the cabinet which contains the more prominent party leaders who are also holders of the principal offices of state; while the outer part consists of the heads of the less important departments, the parliamentary under-

secretaries, the whips * and the officers of the royal household. But all of them are not members of the Cabinet. The pre-war Cabinet consisted of 21 persons; but besides these there were 33 non-cabinet ministers in Parliament. These latter are the "political officers" who are expected to resign their offices when the cabinet is defeated in the House of Commons. The ministry is formed in the following way: the King sends for the recognised leader of the political party which has the majority in the House of Commons and asks him to form a Ministry. If this leader thinks that his party will approve of his assuming such a responsibility, he accepts the commission, and, usually after due consultation with other prominent members of his party, gives to the sovereign a list of the men whom he recommends for appointment to the chief offices of state. These the sovereign appoints and commissions as a matter of course. They are always men chosen from among members of both Houses of Parliament, and generally because they have proved their ability to lead there. The leader chosen by the sovereign to form the ministry stands at its head when formed and is customarily known as the Prime Minister.

The Cabinet.—Prof. Dicey has said "that while the Cabinet is a word of every-day use, no lawyer can say what a cabinet is." Bagehot, however, has undertaken to define the Cabinet. He calls it, first, "a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation;" and, again, he designates it, "as a combining committee, a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state". Professor Gneist calls the Cabinet the council of ministers, *i. e.*, those members of the Privy Council who are the heads, for the time being, of the executive departments.

The Cabinet is thus a Secret Committee of the Privy Council composed of the heads of the executive departments, selected from among the members of both Houses of Parliament belonging to the party in the House of Commons

* "The whips are the agents through whom party machinery is used for the conduct of the business of the House. They are the eyes and ears of their party chief. It is their business to try and discern the direction in which sections of opinion are moving, to hear any mutterings of discontent, and to suggest methods for mitigating or removing it."—*Ilbert, Parliament*, p. 153.

dominant for the time being and jointly and severally responsible to it. * It does not consist invariably of the same

* This description of the cabinet does not apply to what Sir Sidney Low calls Mr. Lloyd George's New Model. The distinctive characteristics of the older Cabinet have all been largely modified in Mr. Lloyd George's New Model.

The identity of the Cabinet with the Ministry is gone. The Cabinet is not the Ministry. The "Cabinet Minister" has almost ceased to exist. The Cabinet member is not, with one exception, a minister at the head of a "working department," the departmental minister is not, with the aforesaid exception, a member of the Cabinet. There are plenty of ministers ; but they stand outside the small ruling council with whom political power rests. Of the five members of this Committee only one, Mr. Bonar Law, is the head of a great administrative office ; the Cabinet is thus reduced to four fully-commissioned members no one of whom is burdened with the care of an executive department. They, in reality, form a Directory, controlling all Departments, but not individually responsible for any.

The Ministry, as a whole, seldom, or perhaps never, meet in joint conference. Each minister manages his own Department, subject only to the supervision of the Directory, and the necessity of vindicating his proceedings, not to the general body of his colleagues, but to the Ruling Committee, which is the co-ordinating link of the whole machinery.

By the new arrangement the Cabinet is in the position of a Board of Directors, with a staff of Departmental managers, each of whom is responsible only for his own branch of the business, and is not consulted upon the general policy, nor necessarily cognisant of it except in so far as it touches upon his special activities.

This leads to another fundamental change. It seems clear that the Ministry as a whole can no longer shelter itself behind the cherished doctrine of collective responsibility. A minister can hardly be expected to bear the burden of a colleague's sins when he has no means of knowing what the colleague is doing.

It is true, of course, that the real Cabinet—the War Cabinet—or Directory of Five—is still collectively responsible and that a want of confidence vote in the House of Commons would be followed by its resignation, together with that of the entire body of its official colleagues or subordinates. To that extent it may be said that Parliament still retains its potential control of the administration.

The War Cabinet ignores party distinction. In the outer Ministry there is the same disregard of the old distinction. There are Unionists, Liberals and Laborites and a few non-party men chosen, as experts, with special knowledge of the particular business entrusted to them.

The relaxation of Parliamentary control is further emphasized by another striking innovation. Mr. Lloyd George invited the Premiers of the self-governing dominions to attend the meetings of the War Cabinet and take part in its deliberations ; the Secretary for India also attended on these occasions, and for this purpose he was confidentially advised by three counsellors nominated by the Indian Government.

number of ministers. The Pre-War Cabinet usually consisted of twenty-one ministers viz.—(1) Lord High Chancellor, (2) Lord President of the Council, (3) Lord Privy Seal, (4) First Lord of the Treasury, (5) First Lord of the Admiralty, (6-10) five Secretaries of State (Home, Foreign, Colonies, India and War), (11) Chancellor of the Exchequer, (12) Secretary for Scotland, (13) Chief Secretary to the Lord-Lieutenant of Ireland, (14) Post-Master-General, (15-18) four Presidents of Committees of the Privy Council (Board of Trade, Local Government Board, Board of Agriculture, Board of Education), (19) Chancellor of the Duchy of Lancaster, (20) First Commissioner of Works, (21) Attorney-General. Since the out-break of the Great War, however, several new temporary ministries have been created, such as those of Munitions, of Aviation, of Foreign Propaganda etc.

The position and functions of some of these high officers of State have now to be explained.

The First Lord of the Treasury :—This office is now invariably held by the Prime Minister. The holder of it receives £5000 year. It is within the choice of the Prime Minister to hold another office, if he wills.* He usually chooses to occupy the office of First Lord of the Treas-

A Cabinet so constituted cannot be made amenable to the British Parliament, since several of its members will have no connection with it.

Finally, it would appear that "the new Cabinet has largely divested itself of the famous and unique characteristic of secrecy. It will have not only its departmental staff (the newspapers of January 10th, 1917, conveyed the information that a Political Intelligence Department had been instituted at Downing Street "to make special investigations for the Cabinet" and to assist in "the co-ordination of the activities of the administrative Department of State") but also its Secretary and Assistant Secretary. A record of the Cabinet's decisions will be kept, and it will no longer be necessary for ministers to rely entirely upon their memory. Here is a long step towards formality and regularity, if not towards publicity. The presence of the Imperial representatives must also tend in the same direction. The Cabinet can no longer be a mysterious informal conclave, when influential outsiders are admitted to its discussions." (From Sir Sidney Low's article on 'The Cabinet Revolution' in the *Fortnightly Review*, February, 1917).

*Just before the outbreak of the War also Mr. Asquith who was Prime Minister and First Lord of the Treasury acted for some time as Secretary of State for War. Again in April 1915 when Sir. Edward (now Lord) Grey, the Foreign minister took leave Mr. Asquith acted for him as Foreign Secretary.

sure, because the official duties of that place are nominal only and leave him free to exercise his important functions as leader of the party in power. He selects the members of the ministry in the way previously explained. "It is said, and truly, that the Prime Minister is unknown to the law; no salary is attached to the office, if office, it can be called; the term does not occur in any Act of Parliament, nor in the records of either House. In two formal documents only does he find place. Lord Beaconsfield described himself in the Treaty of Berlin as Prime Minister of England; and on December 2, 1905, King Edward VII by Royal Proclamation gave place and precedence "to our Prime Minister, next after the Archbishop of York," (*Anson.*)

The Prime Minister has considerable patronage at his disposal. He exercises a general supervision over all departments of State. He decides differences between two or more Cabinet ministers, his decision being subject to a possible appeal to the whole Cabinet. He stands between the Cabinet and the Crown—It is he who acts as the connecting link with the Cabinet as a whole and communicates to the Crown their collective opinion. To such an extent is the Prime Minister the representative of the Cabinet that whereas the resignation of any other minister creates only a vacancy, the resignation of the Premier dissolves the Cabinet altogether. Finally, the Prime Minister must keep a careful watch on the progress of all government measures; and he is expected, to speak not only on all general questions but on all the most important government bills.

The Lord High Chancellor.—is the most notable officer in the whole system. He is president of the House of Lords, of the Court of Appeal, of the High Court of Justice, of the Chancery Division of the High Court, and he is a member of the Judicial Committee of the Privy Council, and he actually sits in all these except the High Court—in the House of Lords and the Privy Council always, and in the Court of Appeal often. More singular still, he is the political officer of the law; he is member always of the Cabinet; and like the other members, belongs to a party and goes in or out of office according to the favour of the House of Commons exercising, while in office, the functions of a Minister of Civil Justice. Important and unique as the position of the Lord Chancellor is, he is the most highly paid officer of the Crown in England, his salary being £10,000 per annum.

The Five Secretaries of State—Five of the great departments to-day represent the product of a curious evolu-

tion of the ancient Secretariat of State. Originally there was but a single official who bore the designation of Secretary of State. In the earlier eighteenth century a second official was added, although no new office was created. At the close of the century a third was added, after the Crimean War a fourth, and after the Indian Mutiny of 1857 a fifth (*viz.* the Secretary of State for India). There are now, accordingly, five "principal Secretaries of State," *all in theory occupying the same office and each, save for a few statutory restrictions, competent legally to exercise the functions of any or all of the others.** In practice each of the five holds strictly to his own domain. The group comprises: (1) the Secretary of State for the Home Department, assisted by a parliamentary under-secretary and a large staff of permanent officials, and possessing functions of a highly miscellaneous sort—those, in general, belonging to the ancient Secretariat which have not been assigned to the care of other departments; (2) the Secretary of State for Foreign Affairs, at the head of a department which not only conducts foreign relations but administers the affairs of such protectorates as are not closely connected with any of the colonies; (3) the Secretary of State for the Colonies; (4) the Secretary of State for War; and (5) the Secretary of State for India whose position and functions are described in the second part of the Introduction.

The Administrative Boards.—The heads of a variety of administrative boards or commissions are very commonly admitted to the Cabinet, though some times they are not of the Cabinet. Two—the Board of Trade and the Board of Education—originated as committees of the Privy Council. Three others—the Board of Agriculture, the Board of Works and the Local Government Board—represent the development of administrative commissions not conceived of originally as vested with political character. All are in effect independent and co-ordinate governmental departments. At the head of each Board is a President (save that the Chief of the Board of Works is known as First Commissioner) and the membership embraces the Five Secretaries of State and a variable number of other important dignitaries. This membership is but nominal. No one of the Boards actually meets, and the work of each is performed entirely by its president with, in some instances, the assistance of a parliamentary under-secretary. "In prac-

* A recent example will illustrate this theory. During the absence of Rt. Hon'ble Mr. Montagu, the Secretary of State for India, another Secretary of State signed all despatches for India for him.

tice, therefore, these boards are legal phantoms that provide imaginary colleagues for a single responsible minister."

Relations of the Ministry to the Crown.—For each *public* act of the Crown the responsibility lies with a minister. (For *private* acts of the Crown, such as correspondence with related monarchs, marriages etc. ministers are not responsible). Though ignorant of the matter at the time it occurred he becomes answerable if he retains his post after it comes to his knowledge. The rule is so universal in its operation "that there is not a moment in the King's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct" (*Todd*). A minister is now politically responsible for everything that occurs in his department, whether counter-signature or seal is affixed by him or not ; and all the ministers are jointly responsible for every highly important political act.

The king has to follow the advice of his Ministers. It is said that he might disregard their advice if he could find others who were willing to adopt his policy and assume responsibility for it. Such an alternative is a very remote possibility in England to-day. It could only be brought about in one of two ways—

(a) He might dismiss the ministry. This right to dismiss a ministry, although unquestionably within the prerogative of the Crown, seems to be regarded as one of those powers which the close responsibility of the Cabinet to the House of Commons has practically made obsolete. Circumstances, however, might arise in which it is evident that the Ministry and the House of Commons no longer represented the opinion of the country and the Crown might, by dismissing a ministry, force a dissolution and appeal to the electorate.

(b) The other way in which a change of ministry could be brought about by the Crown would be by a refusal to consent to some act which the ministry deemed essential to their remaining in office.

Unhampered by the advice of his ministers the Crown chooses the Premier who, in his turn, chooses his colleagues and is responsible for their selection. These ministers direct the action of the Crown in all matters relating to the government and are completely responsible for all political acts done by the Crown during their tenure of office.

According to the earlier theory of the constitution the ministers were the counsellors of the king. It was for them

to advise and for him to decide. Now the position is almost reversed. The king is consulted, but the ministers decide. It is now commonly said that, with the Crown, influence has been substituted for power; or, as Bagehot puts it in his own emphatic way, the Crown has "three rights—the right to be consulted, the right to encourage, and the right to warn. And a king of great sense and sagacity would want no others."

We should here refer to two immemorial customs of the constitution. The first is that the ministers must not bring the king's name into political controversy in any way or refer to his personal wishes in argument either within or outside the Parliament. The second is that the Sovereign is absent from Cabinet meetings. His absence has, indeed, had three distinct effects—(a) it has helped to free the individual members of the Cabinet from royal pressure; (b) it has made it easier for them to act as a unit in their relation to the Crown; and (c) it has tended to remove him from the discussion of public policy until it has been definitely formulated.

The British Parliament.—The British Parliament is at once the oldest, the most comprehensive in jurisdiction, and the most powerful among modern legislative assemblies. Ever since the close of the fourteenth century it has comprised uninterruptedly, aside from the king, the two branches which exist at the present time *viz.* the House of Commons and the House of Lords.

The range of jurisdiction which, step by step, these chambers, both separately and conjointly, have acquired, has been broadened until, so far as the dominions of the British Crown extend, it covers almost the whole of the domain of human government. And within this enormous expanse of political control the competence of the Chambers knows, in neither theory nor fact, any restriction. "The British Parliament," writes Lord Bryce, "can make and unmake any and every law, change the form of government or the succession to the crown, interfere with the course of justice, extinguish the most sacred rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chambers where it sits. * * *. Both practically and legally it is to-day the only and the sufficient depository of the authority of the nation; and it is therefore, within the sphere of the law, irresponsible and omnipotent"

The House of Commons.—The House consists of 670 members, 465 for England, 39 for Wales, 72 for Scotland, and 103 for Ireland. Single member constituencies are the general rule, but in a few cases one constituency returns two members. Every male house-holder who has resided in his constituency for a year, and has paid his rates is entitled to be registered, and, when registered, to vote as a parliamentary elector for that constituency. This is the most general franchise, but there are others, including the occupation of lodgings rented at £10 a year, and the ownership or occupation of lands or buildings of a certain value. Some of the Universities return members, elected by their graduates. [According to the *Representation of the People Act* of this year a man is to be qualified by six months' residence or by occupation of business premises: it also enfranchises women who have attained the age of thirty, and are local government electors or the wives of local government electors. Seats are to be redistributed in Great Britain on the basis of one member for every 70,000 of the population. The next House of Commons will consist of 707 members, as compared with the 670 who have seats in the present House.]

Subject to disqualifications arising from peerage, holding of-office, bankruptcy, and conviction for treason or felony, every male British subject who is of full age is eligible to the membership of the House of Commons. * A peer of the United Kingdom or of Scotland is not eligible, but a peer of Ireland, unless he be one of the representative Irish peers, is eligible for any but an Irish seat. Where a member of the House of Commons is described as a lord, he is either an Irish peer, or more frequently, a commoner holding a courtesy title as son of a peer.

The House of Lords.—The House of Lords is at present composed of about 600 members with different titles *viz.* the Princes of the Blood Royal, the English hereditary peers (Dukes, Marquises, Earls, Viscounts and Barons); the Archbishops of Canterbury and York; twenty four of the Bishops, according to the seniority of consecration (but always including the bishops of London, Durham and Winchester); sixteen Scottish representative peers, elected by the whole body of Scottish peers to sit for the term of Parliament; twen-

* Indians as British Subjects, are also eligible, for membership if they are returned by English constituencies. The late Mr. Dadabhai Naoroji and Sir M. Bhowanaggee succeeded in entering the House of Commons as members for English constituencies.

ty-eight Irish peers to sit for life ; and six judicial members known as Lords of Appeal in Ordinary, sitting as life peers only by virtue of their office. It will be seen that the House of Lords, as it is at present constituted, is mainly hereditary in character. But, as John Bright once declared, "a hereditary House of Lords is not, and cannot be, perpetual in a free country." The question of reforming the House of Lords* has been before the British public for a very long time ; but it has come into prominence ever since the Lords' rejection of Mr. Lloyd George's Budget in 1909. In its preamble the Parliament Act of 1911 promises further legislation which will define both the composition and the powers of a Second Chamber "constituted on a popular, instead of an hereditary basis." According to a distinguished authority "the most reasonable programme of reform would seem to be, not a total reconstitution of the chamber upon a non-hereditary basis, but (1) the adoption of the Rosebery principle that the possession of a peerage shall not of itself entitle the possessor to sit, (2) the admission to membership of a considerable number of persons representative of the whole body of peers,

*The report of the conference, presided over by Lord Bryce, on the reform of the Second Chamber has lately been issued. It recommends that the Second Chamber shall consist of two sections, firstly, of 246 persons elected by panels of members of the House of Commons, distributed in geographical groups, and secondly of persons chosen by a Joint Standing Committee of both Houses and numbering about one-fourth of the whole of the Second Chamber, excluding *ex-officio* members. The term of office of a member of the Second Chamber will be twelve years and one-third of the members will retire every fourth year, their places to be filled up by election. Peers who are not members of the Second Chamber will be eligible to sit in the House of Commons. Clergymen of the Church of England, the Roman Catholic Church, also the Church of Scotland and the Protestant Episcopal Church of Ireland will be eligible for election. If it be decided that members of the Second Chamber be paid, the payment shall be the same as for members of the House of Commons.

The Second Chamber will not be empowered to amend or reject financial bills. A bill which is claimed to be a financial bill may be referred to an appointed authority which will be elected at the beginning of every session and will consist of seven members of each House. When the two chambers disagree the bill may be referred to a free conference of both Houses consisting of thirty members who shall report simultaneously to both Houses the suggested basis of agreement.

Under the geographical group system Scotland shall be entitled to thirty seats in the Second Chamber, London and Lancashire each to twenty-seven, Yorkshire to twenty-four, Wessex to eighteen, Wales and Monmouth, the South-Eastern district, the South Midlands and the Northern district each to fifteen. If representatives of Ireland are included, they will number twenty-seven, making a total of 273.

and (3) the introduction of a goodly quota of life peers, appointed by reason of legal attainments, governmental experience, and other qualities of fitness and eminence.

Privileges of the Houses and of Members.—On the basis in part of custom and in part of statute, there exists a body of definitely established privileges, some of which appertain to the Commons as a Chamber, some similarly to the Lords, and some to the individual members of both Houses. The privileges, which at the opening of a Parliament the newly elected Speaker* requests, and, as a matter of course, obtains for the chamber over which he presides, include principally those of freedom from arrest, freedom of speech, access to the Sovereign, and a "favourable construction" upon the proceedings of the House. Freedom from arrest is enjoyed by members during the sitting of Parliament and forty days before and after the session, except in cases of treason, felony, etc. They have perfect freedom of speech and debate in the House and they cannot be legally dealt with for anything said in the House by any Court or body outside the House. If, however, they cause their words or speeches to be published, they are subject to prosecution for libel, like any private person. The right of free access to the Sovereign is enjoyed by both Houses. But, while the Lords are individually entitled to have access to the Sovereign, the Commons enjoy the right as a body. Another privilege which survives is that of exemption from jury duty, though no longer of refusing to attend Court in the capacity of a witness. Each House enjoys the privilege of regulating its own proceedings, of committing persons for contempt and of deciding contested elections. The last mentioned function the House of Commons, however, has delegated to the Courts. Since 1911 the non-official members of the House of Commons are being paid an annual salary of £400. No salary attaches to membership of the other House. The Lords reserve to themselves the right of trying all cases of treason or felony: they are exempt from arrest in civil causes, not merely during and immediately preceding and succeed-

* The "Speaker" is elected at the beginning of a parliament by and from the members of the House of Commons and his tenure of office, unless terminated by resignation or death, continues through the term of that parliament. Though nominally elected, the speaker is in fact chosen by the ministry, and he is pretty certain to be taken in the first instance from the party in power. During the 19th century, however, it became customary to re-elect a speaker as long as he should be willing to serve, regardless of party affiliation.

ing sessions, but at all times, and they enjoy all the rights, privileges and distinctions which, through law or custom, have become inherent in their order.

The Functions of Parliament.—The functions of Parliament may be briefly described under three heads. The first is that of criticism, involving the habitual scrutiny and control of the measures of the executive and administrative organs, through the instrumentality of questions, formal enquiries, and, if need be, judicial procedure. The second function is the exercise of the power of judicature. The powers of a judicial character exercised by the two Chambers in their capacity of the High Court of Parliament comprise—(1) the powers possessed by each of the Houses to deal with the constitution and conduct of its own membership; (2) the power of the Lords to try their own members when charged with treason or felony; (3) the jurisdiction of the Lords in the capacity of a final court of appeal for the United Kingdom; (4) the power of the two Houses, acting jointly, to carry through impeachments of public officers and to enact bills of attainder,¹ and (5) the effecting of the removal of certain kinds of public officers (*e.g.*, members of the Council of India) through the agency of an address from both Houses to the Crown. Most important among surviving parliamentary functions of a judicial character is the exercise of appellate jurisdiction by the House of Lords. These judicial functions are now always exercised by the Lord Chancellor who is *ex-officio* president of the House of Lords, and six Lords of Appeal in Ordinary who are learned judges appointed as life peers specially to perform this duty. These special “Law Lords” are assisted from time to time by other Lords who have served as judges of the higher Courts or who are specially learned in the law. The House of Lords may sit, when acting as a Court, when Parliament is not in session, after a prorogation, or even after a dissolution. For the House of Lords when sitting as a Court, is, except in its mode of procedure, totally unlike the body which obeys the House of Commons in law-making.

¹ “Impeachment” is a judicial trial, by the House of Lords, of a person accused, by the House of Commons, of grave offences which the ordinary law cannot reach, through its insufficiency or uncertainty, or in case of which it is apprehended that the execution of the law will be corruptly interfered with. Impeachment has now lost its value and has fallen into disuse, the last occasion upon which impeachment proceedings were instituted being 1805. Procedure by bill of attainder, arising from the legislative omnipotence of Parliament and following the ordinary course of legislation, is also obsolete.

The principal functions of Parliament to-day are, however, those of legislation and financial and administrative control. In all these matters the two Houses wielded, in theory, co-ordinate authority prior to the passing of the Parliament Act in 1911. But on August 10, 1911, fell before the united forces of Crown, Commons and Electorate, the independent power of the oldest assembly in the world. The Parliament Act of 1911 thus limits the legislative and financial powers of the House of Lords—

(a) A public bill passed by the House of Commons and certified by the Speaker to be, within the terms of the Act, a "money bill" shall, unless the Commons direct to the contrary, become an act of Parliament on the royal assent being signified, notwithstanding that the House of Lords may not have consented to the bill within one month after it shall have been sent up to that House.

(b) Any other public bill (except one to extend the maximum duration of Parliament beyond five years) which is passed by the House of Commons in three successive sessions, whether or not of the same Parliament, and which, having been sent up to the House of Lords at least one month, in each case, before the end of the session, is rejected by that Chamber in each of those sessions, shall, unless the House of Commons direct to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding the fact that the House of Lords has not consented to the bill. It is required that at least two years shall have elapsed between the date of the second reading of such a bill in the first of these sessions of the House of Commons and the final passage of the bill in the third of the sessions.

English Political Parties.—By a political party we mean a more or less organized group of citizens who act as a unit. They share, or profess to share, the same opinions on public questions, and by exercising their voting power towards a common end, seek to obtain control of the Government. Though standing almost outside the legal structure of the state, party government is the vital principle of its existence. The natural division into parties for political purposes would seem to be multiple, not dual—whether the parties are based on similarity of conviction or on community of interests. The decisive impulse towards a permanently dual organization of parties appears to be given by the desire to carry elections—specially elections in which the Supreme Executive is directly or indirectly appointed. Thus in Eng-

land the two main parties are—the Liberals (including the Labourites and the Irish Nationalists) and the Unionists.

The classic theory of parties in England is thus well stated by May—"The parties in which Englishmen have associated, have represented cardinal principles of government,—authority on the one side, popular rights and privileges on the other. The former principle pressed to extremes, would lead to absolutism,—the latter, to a republic : but, controlled within proper limits, they are both necessary for the safe working of a balanced constitution. When the parties have lost sight of these principles in pursuit of objects less worthy, they have degenerated into factions."

Essential to the working of the party system, run on the English lines, would thus seem to be, firstly, a general agreement on certain fundamental principles of supreme importance, and secondly, a willingness to ignore really trifling points of difference in order to attain those great ends for which a parliamentary party is organized.

The English Judicial System :—The general courts of the kingdom are combined under the name, the Supreme Court of Judicature. This Court is divided into two parts which are really two distinct courts, viz.—the High Court of Justice and the Court of Appeal. The High Court of Justice acts in three Divisions—

- (1) The Chancery Division, consisting of five judges besides its president, the Lord High Chancellor ;
- (2) The King's Bench Division, consisting of fifteen judges of whom one, the Lord Chief Justice, is the President ; and
- (3) The Probate, Divorce and Admiralty Division consisting of two Judges of whom one presides over the other.

These three Divisions constitute the ordinary courts of law inheriting the jurisdictions suggested by their names. From them an appeal lies to the Court of Appeal which consists of the Master of the Rolls, five Lords Justices and the presidents of the three Divisions of the High Court of Justice. From this Court of Appeal, again, a final appeal lies to the House of Lords.

PART II.

The Present Working Constitution of British India.

The Crown.—We have already seen how the powers and prerogatives of our King-Emperor are far wider than than those exercised by the heads of many powerful civilised states of to-day. "It would very much surprise people," as Bagehot remarked in his incisive way, "if they were told how many things the Queen could do without consulting the Parliament. * * * Not to mention other things, she could disband the army (by law she cannot engage more than a certain number of men, but she is not obliged to engage any man); she could dismiss all officers, from the general commanding in chief downwards. She could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom a peer; she could make every parish in the United Kingdom a university; she could dismiss most of the civil servants; she could pardon all offenders. In a word the Queen could by prerogative upset all the action of civil government within the government."

If we examine the positive powers that are vested in our King-Emperor by the Government of India Act, 1915, we shall find how vast and wide they are, and how intimately they are bound up with the good government of the country.

The territories for the time being vested in India are governed by, and in the name of, His Majesty the King-Emperor of India and the revenues of India are received for, and in the name of, His Majesty.

His Majesty appoints by warrant under the Royal Sign Manual—(1) the Governor-General of India, (2) the ordinary members of the Governor-General's Executive Council, (3) the Governors of Bengal, Madras and Bombay, (4) the members of a Governor's Executive Council, (5) an advocate-general for each of the presidencies of Bengal, Madras and Bombay, and (6) any person conditionally to succeed to any of the first four aforesaid classes of office, in the event of the office becoming vacant. His Majesty also appoints the chief

justices and other judges of the High Courts who hold office during his pleasure ; and he may remove any member of the Council of India from his office on an address of both Houses of Parliament.

His Majesty's approval is necessary for (a) constituting, by notification, a new province under a Lieutenant-Governor, (b) appointing a lieutenant-governor, (c) declaring and limiting the extent of the authority of any lieutenant-governor, (d) appointing members of a lieutenant-governor's executive council, (e) constituting new local legislatures under lieutenant-governors, and (f) transferring an entire district from one province to another.

His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established its proper jurisdiction, powers and authority.

His Majesty may, by warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, (a) appoint a fit person to be auditor of the accounts of the Secretary of State in Council, (b) grant pensions and gratuities to any Secretary, officer or servant appointed on the establishment of the Secretary of State in Council, and (c) grant, under conditions, out of the revenues of India, to any Bishop of Calcutta, a pension not exceeding £1500 per annum and a pension of £800 per annum to the Bishops of Bombay and Madras.

His Majesty may signify, through the Secretary of State in Council, his disallowance of (a) any Act passed by the Governor-General in legislative council, even though the Governor-General has signified his assent to it, (b) any Act passed by a local legislature, even though the Governor, Lieutenant-Governor or Chief-Commissioner and the Governor-General have assented to it and (c) any order of the Governor-General altering the local limits of the jurisdiction of High Courts.

Finally, His Majesty, by letters patent, appoints the bishops and archdeacons of Calcutta, Madras and Bombay, determines their ecclesiastical jurisdiction and functions and varies the limits of their dioceses.

The Secretary of State for India.—The authority of the Crown over India is exercised in England by "the Secretary of State". Sec. 2 of the Government of India Acts (1915 and 1916) speaks of "the Secretary of State"

because in the eye of English constitutional law, the office of the Secretary of State is a unit, and any Secretary of State is, theoretically, capable of discharging the duties of any other.* The Secretary of State for India, who is the direct descendant of the President of the Board of Control, is a member of either House of Parliament, a Cabinet Minister and a Privy Councillor. As a member of the British Cabinet, he is responsible to, and represents the authority of Parliament. He is appointed by the delivery of the seals of office and he continues in office so long as the Cabinet, of which he is a member, is in power. He is assisted by two under-secretaries, one permanent, who is a member of the Civil Service, the other parliamentary, who changes with the government. There are paid every year out of the revenues of India £5000 to the Secretary of State, £2000 to the permanent Under-Secretary and £1500 to the Parliamentary Under-Secretary.

We should remember in this connection that the position of the Secretary of State for India is different from that of the Secretary of State for the Colonies. In Canada and in the other dominions the Executive Government is, as in India, vested in the Crown, but the administration is entrusted to the Governor-General or Governor, and not to the Secretary of State who owes his actual authority solely to the fact that the Crown acts on his advice; in India, on the contrary, there is a duplication of authority: the superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, but he is required to pay due obedience to all such orders as he may receive from the Secretary of State, and the Secretary of State, again, may superintend, direct and control all operations and concerns which relate to the government of India and to its revenues. In some other respects also the position of the Secretary of State for India differs from that of the Colonial Secretary of State.

* This theory was practically given effect to during the absence of the Rt. Hon. Mr. Montagu, the Secretary of State for India, from England in the winter of 1917-18. The Cabinet was of opinion that the following would suffice as a temporary expedient :—Despatches to India required the signature of the Secretary of State but any Secretary of State might act for another and despatches were signed by Mr. Long, another Secretary of State. Most of the powers of the Secretary of State were exercised by the Secretary of State in Council, and as the Act provided for meetings of the Council in the absence of the Secretary of State, the Council continued to sit weekly, the Vice-President presiding. Urgent questions of the first importance were decided by the Cabinet.

First, the Secretary of State for India has, as we shall presently see, a council to advise and correct him—but the Secretary of State for the Colonies has none. Secondly, the salaries of the Secretary of State for the Colonies and of his establishment form a charge on the Home Government, and are, therefore, included in the estimates placed before the House of Commons every year. When these items are under discussion, there can be a debate on the general policy of the Colonial Secretary or any details connected with his work, and alterations in his estimates may be made by the House of Commons. This is not the case with the Secretary of State for India, whose salary is a charge on the Indian Exchequer.

The Council of India.—The Secretary of State is assisted by a Council called the Council of India which consists of such number of members, not less than 10 and not more than 14, as the Secretary of State may determine. At least 9 of the members must have served or resided in British India for not less than 10 years and not left British India more than five years before the date of their appointment. The members are appointed by the Secretary of State for a term of 7 years at the outset and may be re-appointed for a further term of 5 years for special and declared public reasons; any member of the Council may be removed by His Majesty from his office on an address of both Houses of Parliament. No member can sit or vote in either House of Parliament, and hence can take no active share in party politics. Each member gets an annual salary of £1000. Since 1907 the Council has included two Indian members to whose appointment there is no constitutional objection.

The Council at present consists of retired civil servants, experienced Indians, successful bankers, financiers, educationists, administrators and military and other experts. From the Council are appointed 7 committees, to which matters connected with the various branches of the administration are referred before being finally laid before the Secretary of State in Council.

The Secretary of State and his Council.—The Secretary of State is the President of the Council with power to vote. He may appoint any member to be Vice-President of the Council, and may at any time remove any person so appointed. At every meeting of the Council of India the Secretary of State or, in his absence, the Vice-President, if present, or, in the absence of both of them, one of the members

of the Council, chosen by the members present at the meeting, presides. Meetings of the Council are held when and as the Secretary of State directs, but one such meeting at least must be held every week. Five members form a quorum ; if a Council decides any question in his absence, his approval in writing is required. Normally indeed every order or communication to India or order to be made in the United Kingdom must either be submitted to a Council meeting or placed in the council room for the perusal of the members for 7 days before its despatch. But even if a majority of the Council record dissent the Secretary of State may take the proposed action, though he must record his reasons for doing so. He may also act without the council in cases which he deems urgent, though he must record his reasons and inform the Council. But in cases of levying war or making peace, or negotiations with, or questions of policy as to, any prince or state he may, if he considers fit, communicate his orders to any officer in India without the knowledge of the Council, and the Governor-General in Council and Governors in Council may mark such correspondence emanating from them as secret, in which case it need not be shown to the Council of India at all.

The Secretary of State in Council.—The powers of the Secretary of State for India in Council are immense, far exceeding those exercised by the colonial Secretary of State. So far as finance and expenditure are concerned, the Council stands to the Secretary of State for India much in the same relation as that in which Parliament stands to the other Secretaries of State. It may reasonably be assumed that Parliament would not have given these immense powers to any individual official if, in the exercise of such powers, he was dissociated from his Council.

As a matter of form certain things have to be done by "the Secretary of State *in Council*," *e. g.*, the royal veto on laws passed by the Indian Legislature is signified to the Government of India by the Secretary of State in Council. Again if the Indian Government wants by proclamation to alter provincial boundaries or to create a provincial legislature the previous sanction of the King is communicated by the Secretary of State in Council. It is the Secretary of State in Council who finally sanctions the enactment of any law by the Governor-General in Legislative Council abolishing any High Court or empowering any Court other than a High Court to sentence to death any of His Majesty's natural-born subjects born in Europe or the children of such subjects.

Again, there are certain things which the Secretary of State must do in Council although the Council cannot control his decision. The Secretary of State may overrule his Council, stating his reasons in writing in cases such as appointments, promotions or removals in the establishment of the India office, or the making of regulations for the admission of candidates to the Indian Civil Services.

Finally, there are certain matters which must be decided in Council and in doing which the Secretary of State is bound by statute to obey the majority. Here he must act not only *in* Council, but *with* it. Thus the concurrence of the majority of votes of the Council is necessary for :—(1) any grant or appropriation of any part of those revenues, or any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858 or this Act. (Sec. 21.) ; (2) for selling or mortgaging any real or personal estate for the time being vested in His Majesty for the purposes of Government of India (Sec. 28.) ; (3) for making any contract for the purposes of this Act (Sec. 29.) ; (4) for sanctioning any rules prescribed by the Governor-General in Council regulating appointments to offices in the Indian Civil Service of persons of proved merit and ability domiciled in British India, born of parents habitually resident in India and not established there for temporary purposes only (Sec. 99.) ; (5) for making provisional appointments in the civil service of persons not being a member of that service. (Sec. 100.)

The Act lays down that the revenues of India shall be received for and in the name of His Majesty and subject to the provisions of this act be applied for the purposes of Government of India alone. (Sec. 21.) ; It charges on the revenues all expenses, debts, and liabilities lawfully contracted and incurred on account of the Government of India and throws upon the Secretary of State in Council the control of the expenditure both in British India and elsewhere (secs. 20, 21, 23-6). "It follows from this position of the Secretary of State that power to deal with property situated in India or to make contracts can only be exercised by the Governor-General in Council or any local Government, subject to restrictions prescribed by the Secretary of State with the approval of a majority of the Council (Sec. 30). It follows also that from his control of the assets and revenues of India the Secretary of State is deeply concerned in financial affairs

and a further consequence is that the Secretary of State in Council is a legal entity with powers to sue and be sued* (Sec. 32); any person has the same remedies against the Secretary of State in Council as against the East India Company but he and the members of his Council and officers acting on his behalf are exempt from personal liability, though the revenues of India remain liable, and execution may be had against property vested in the Crown. The Government of India in this regard is in an inferior position to a Dominion Government which, primarily, is not liable at all to suits though in

* "In British India the relations between the Government of India and the subject differ from those which exist in England between the Crown and the subject. This difference is explained by the history of the development of the Government of India. The East India Company commenced as a trading corporation, and by degrees assumed the function of a sovereign power. When the Government was taken over by the Crown, the Crown stepped into the place of the Company, and the relations between the Crown and the subject so far as rights of suit were concerned, remained practically the same as they were at the time of the extinction of the Company.

There have been several cases in which the liability of the Secretary of State in Council as representing the Government, or rather the liability of the revenues of India for the acts or defaults of the servants of the Government in India has been the subject of judicial consideration. The latest decision on this subject is that of the *Secretary of State v. Cockcroft* (1914-39 Mad. 351). In that case the plaintiff claimed damages for injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a military road maintained by the P. W. D. of the Government. It was held that the act was done by the servant of Government in exercise of the sovereign power of the Government and that therefore the revenues of India were not liable. Acts done by the Government such as might have been done by private individuals, or by municipalities or similar bodies, stand upon a different footing. They are not done in exercise of sovereign power. Thus in the leading case of the *Peninsular and Oriental Steam Navigation Company vs. Secretary of State* (1861-5 Bom. H. C. R. App. 1) it was held that the revenues of India were responsible for the negligent acts of servants of Government who were working in a Government dockyard. It is sometimes not quite easy to say what is a "Sovereign act." The authority of the *P. and O. S. N. Co. vs. Secretary of State* has been recently upheld in *Secretary of State vs. Moment* (1912, 40 L. R. I. A. 48) In that case the Judicial Committee held that S. 41 of an Act (No. 4 of 1898) passed by the Burma Legislative Council, which enacted that no Civil Courts shall have jurisdiction to determine any claim to any right over land as against the Government was *ultra vires*, as being in contravention of sec. 65 of the Government of India Act, 1858. An attempt was made in the Bill relating to the Government of India which was recently introduced to give legislative Councils power to bar suits against Government but this proposal was dropped in Committee".—Sir E. J. Trevelyan in the *Journal of the Society of Comparative Legislation*, Jan. 1917.

most cases in the Dominions that exemption has been greatly limited by legislation. On the other hand it is contrary to practice in the Dominions to allow execution against governmental property in any case. But of course the power to bring actions does not extend to cases where the measures taken by the Government are political in nature, in which case even the East India Company would have been held to be exempt from suit." (*Keith*).

It will be seen from the above that the cases in which the assent of a majority of the Council is required in order that action may be taken are limited in number ; and in all cases, the Secretary of State, a Cabinet minister, speaking, it may be, with the authority of the Cabinet, and responsible to Parliament, can make it very difficult for his Council to differ from him. And here comes in the question of the relationship between the Secretary of State for India and Parliament. The Secretary of State is also a member of the Cabinet, and as such is responsible to Parliament. Questions concerning the Government of India may therefore be asked in either House, and it is open to any member, subject to the rules of the House, to promote a discussion, to submit a resolution or to propose a vote of censure.

Parliamentary Control over Indian Affairs.—Parliamentary legislation has, at one time or another, created the Government of India, authorised the establishment of the large Provinces ruled by Lieutenant-Governors and brought the Presidency Governments of Madras, Bombay and Bengal into subordination to the Central Government. From Parliament, too, are derived the constitution and functions of the Indian and Provincial legislatures, the High Courts, and the method of recruitment of the Indian Civil Service and any material change in these would, as a consequence, involve Parliamentary sanction.

The control of Parliament over Indian affairs may be classified under two heads (1) Legislative, and (2) Administrative. As the legislative powers of the Governor-General in Council, though wide, are derived from parliamentary statutes, he may therefore be said to exercise powers of subordinate legislation which are therefore limited. These limitations are, that the Governor-General in Council has not power to make any law repealing or affecting—

- (a) any Act of Parliament passed after the year 1860 and extending to British India ; or

(b) any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India ;

(c) or the Army Act, or any Act amending the same.

The Governor-General in Council has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of British India. Parliament can, on the other hand, control the proceedings of the Governor-General in Council, repeal or alter any laws made by any authority in British India, and legislate for British India. But as in the case of Canada and other self-governing dominions this power is held in abeyance, and is evoked into life merely when there is a question of constitutional legislation or of general legislation for the Empire, in both of which cases Parliament is prepared to legislate even for the dominions. We may thus conclude that the Governor-General in Legislation Council is, in the words of Prof. Dicey, a non-sovereign legislative body—the King in Parliament being the legislative sovereign of India.

The administrative control of Parliament really includes financial control ; but for the purpose of elucidation it may be divided under two heads—(a) purely administrative and (b) financial. The financial control of Parliament is very limited and indirect. The only matters in which its sanction is necessary are—(1) expenditure on military operations beyond the external frontiers of India.¹ (unless the expen-

*Thus India's offer to place an expeditionary force at the disposal of the Crown for service in the Great War and to bear the expenses of that force as if it had stayed in this country, was formally accepted by Parliament, both Houses of which passed Resolutions giving constitutional ratification to the arrangements made by Government in pursuance of a Resolution unanimously passed by the Viceregal Council in that behalf. The Resolution moved by Mr. Asquith, the Prime Minister, in the House of Commons, was as follows :—

“That His Majesty having directed a military force consisting of British and Indian troops charged upon the revenues of India to be despatched to Europe for service in the war in which this country is engaged, this House consents that the ordinary charges of any vessels belonging to the Government that may be employed in this expedition, which would have been charged upon the resources of India had such troops or vessels remained in that country or seas adjacent, continue to be so chargeable, provided that if it shall be necessary to replace

diture is necessary for preventing, or repelling actual invasion of India, i.e., unless it is for defensive purposes), and (2) the annual presentation of the Indian Budget before Parliament together with a report on the Home Accounts by an independent auditor and a statement showing the moral and material progress of India.

The administrative control of Parliament is exercised by means of motions for papers, resolutions, criticisms, questions etc. Resolutions in the House of Commons, it is well-known, are not binding on the Executive Government which may give effect to them or ignore them altogether according as they agree with their policy or not. The Secretary of State is responsible to Parliament and he "and the Cabinet of which he is a member, are open to criticism, and if occasion should arise, to censure, in either House of Parliament ; while every member has the right of interpellation on any matter relating to the administration of India."

The following matters also require the sanction of Parliament—

(1) Procedure for the appointment of the Governor-General, Governors, Lieutenant-Governors, Members of Council, High Court Judges and the fixing of their salaries and numbers ;

(2) Constitution of Legislative and Executive Councils,

(3) Rules and conditions for the nomination and election of members of the Indian legislatures, for the discussion of the annual financial statement and of matters of public interest, for the asking of questions, and for the appointment of a Vice-President ;

(4) Rules for admission to the Indian Civil Service ;

(5) Prescribing the powers of the Secretary of State, the Governor-General and Governors (but not Lieutenant-Governors) ;

(6) Procedure for auditing the accounts of the Government of India ;

(7) The alteration in the position of Members of the Council of India in regard to their personal non-liability for any contract entered into by them in their official capacity ;

troops or vessels so withdrawn by other vessels or forces, then the expense of raising, maintaining and providing such vessels and forces shall be paid out of any moneys which may be provided by Parliament for the purposes of the said expedition."

(8) The alteration in the powers of the Secretary of State regarding the disposal of moneys kept in his custody for Home charges etc., (they are to be kept in the Bank of England or of Ireland) ;

(9) The alteration in the functions, constitution and procedure of the Secretary of State in Council.

(10) The commencement of hostilities.

Regarding the last item it may be said that, while Parliament has claimed some measure of control over the power to carry on war in India, it has not forbidden the exercise of that power by the local Indian authorities. An order directing the actual commencement of hostilities must be communicated to Parliament within three months after it has been given,—the time allowed being a quaint relic of the past. Except for the purpose of preventing or repelling actual invasion or under other sudden and urgent necessity, the revenues of India shall not, as we have already seen, be applicable, without the consent of both Houses of Parliament, to defraying the expenses of military operations beyond the external frontiers of His Majesty's Indian possessions by His Majesty's forces charged upon those revenues. But even the Governor-General in Council has certain powers of levying war without the previous approval of the Secretary of State in Council. If hostilities have actually begun or preparations made for beginning hostilities against British India or a dependent prince or state, or a prince or state protected by treaty of guarantee, he may declare war, commence hostilities, or make treaties for making war against the attacking power, and may even make treaties of guarantee in respect of the possessions of a prince or state in return for assistance against the assailing power. In any case where he commences hostilities or makes a treaty, the action must be reported to the Secretary of State. Even local governments may commence hostilities and make treaties in case of sudden emergency or imminent danger, but such treaties should, if possible, be made subject to ratification by the Governor-General in Council (sec. 45). "*De facto*, of course, the time for serious exercise of these powers has disappeared. But the existence of the power is interesting ; no Governor-General or Government of a Dominion has any legal authority to do a single act of sovereignty as regards the declaration of war, the making of peace, or of political treaties of any kind." (*Keith*.)

About the general nature of the control of Parliament over Indian affairs the Marquess of Crewe thus spoke in the

course of a speech (on February 21, 1912) on the Delhi changes—"We are all of us perfectly well aware that the ultimate control of Parliament over Indian matters cannot be disputed and is not disputed. The ultimate control of Parliament over all Indian affairs rests on the simple fact that Parliament can, at any time, get rid of those, whether they be members of the Indian administration or of the Indian Government at home, who are responsible for the conduct of Indian affairs. But Parliament has never sought or wished to discuss the details of all the administrative acts of the Indian Government beforehand, though it, of course, reserves to itself the right of saying that those who carry out administrative acts, which they are entitled by law to carry out, must be subject to any penalty Parliament may think fit to inflict upon them if those acts are disapproved of."

The Viceroy and Governor-General: his position and powers.—The supreme authority in India is vested by statute in the Governor-General in Council, subject to the control of the Secretary of State. At the head of the Government is the Governor-General, who also, as the representative of the Crown, has been called, since 1858, the Viceroy. He is appointed by His Majesty the King-Emperor, on the advice of the Prime Minister, by warrant under the Royal Sign Manual and usually holds office for a term of five years.

In a country where loyalty to the throne and person of the Sovereign is ingrained in the minds of the people, the personality of his representative—the Viceroy and Governor-General—counts for a great deal. He is the repository of all those prerogatives and powers, privileges and immunities, which have become vested in him as the representative of the British Crown and as the successor, on behalf of the Crown, to the old territorial princes and rulers of the land. Like the Colonial Governors he has now the prerogative of pardon which is expressly conferred on him by his warrant of appointment. Thus in the Royal Warrant appointing His Excellency Lord Chelmsford to be Governor-General of India the Royal prerogative to grant a free or conditional pardon to any offender convicted by a court of justice in the exercise of its criminal jurisdiction has been delegated to the Governor-General. This delegation does not, however, empty the Crown of its prerogative in this respect. The prerogative still exists and may be exercised on occasions, but the

Governor-General is now able to grant such a pardon on His Majesty's behalf should he think it right to do so.

Associated with his Council and subject to the control of the Secretary of State, he is not only vested with the power of superintendence, direction and control of the civil and military Government of India, but also of making treaties or arrangements with Asiatic states, of exercising jurisdiction and other powers in foreign territory, and of acquiring and ceding territory. With the approval of His Majesty he appoints Lieutenant-Governors; and with the approval of his Council he appoints temporary judges of the High Courts. He, on his own authority, appoints a member of his Executive Council to be Vice-president thereof and makes rules and orders for the more convenient transaction of business in his Executive Council.

He is not subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by him in his public capacity only; he is not liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor is he subject to the original criminal jurisdiction of any high court except on charges of treason or felony.

If the Governor-General can command the support of the Secretary of State he can wield very great powers indeed. He has statutory powers of overruling his Executive Council and also of vetoing any statute passed by any legislature in India; he may even legislate on his own sole authority, subject to the limitation that laws so made by him do not continue in force for a longer period than six months. These powers are, of course, for use in emergencies; and, as a matter of fact, the Governor-General has only on very few occasions made laws on his own authority.

The Viceroy is under no positive obligation to summon his Executive Council for joint deliberation, and under some Governors-General considerable intervals have elapsed between Council meetings. The Governor-General's official correspondence with the Home Government is known to his Council, the members of which append their signatures to his despatches. But he is in regular communication with the Secretary of State by private letters and telegrams, and of this correspondence the Council may remain in entire ignorance. Regarding this last form of communication the Mesopotamia Commission's Report says—

"In addition to the authorised statutory communications * it has always been the practice of the Secretary of State and the Governor-General to communicate privately, one with another, both by telegram and by letter. These telegrams have, up till quite recently, been supplementary to, and explanatory of, the official telegrams sent, which, as a matter of course, come before the Governor-General and Secretary of State in Council. They have also dealt with personal matters, which, it is not advisable, should be contained in official telegrams, and within certain limits they seem to us to be useful, if not necessary, links of intercommunication."

"All the Statutes relating to the Government of India were consolidated in Acts which received Royal Assent in 1915 and 1916; but in these consolidating Statutes no mention whatever is made of private communications, nor is authority given either to the Secretary of State, or the Governor-General to substitute private telegrams for the prescribed methods of communication laid down by the Statute. All private telegrams are the property of the sender, and they are not necessarily recorded on the files of the Department to which their contents may relate; though they are occasionally so recorded when the Secretary of State or Governor-General gives express orders to that effect. It is usually the practice of the Secretary of State and the Governor-General to take away their private telegrams at the close of their tenure of office, and Lord Crewe informed us that Lord Morley so acted on vacating the post of Secretary of State for India. There is, therefore, no public record of the purport of the vast majority of these private communications. The substitution of private for public telegrams in recent years has apparently so developed as to become almost the regular channel of official inter-communication."

* These means of communication, according to the Statute, come under three heads :—

- (a) "Public," or, as we prefer to designate them, official communications which pass through the Council.
- (b) "Urgent" communications, which need not necessarily go to the Council and which the Secretary of State has the power of sending on his own authority, though he is subsequently under the obligation of explaining the causes for his so acting.
- (c) "Secret" communications, on which the Secretary of State has the power of acting on his own authority, nor need he explain to his Council the reasons why he dispenses with their advice. But these "secret" communications are limited to certain subjects.

The Viceroy's Council.—The Governor-General has generally no power to act otherwise than in Council (where he is ordinarily bound by the decision of the majority). All official acts of the central Indian Government run in the name of this corporate body which is commonly and properly described as the Government of India. In the Governor-General in Council is vested "the superintendence, direction, and control of the whole civil and military government" of British India.

The Constitution of the Council.—The Governor-General's Executive Council consists of the ordinary members and the extraordinary members (if any) thereof. There are now six ordinary members of Council who are all appointed by His Majesty under the Royal Sign Manual. Three out of these six members must, according to the Government of India Act, 1915, be persons who have been for at least ten years in the service of the Crown in India—it should be noted that the Act does not lay down that they must belong to the Indian Civil Service; one must be a barrister of England or Ireland, or a member of the faculty of Advocates of Scotland, of not less than five years' standing. None of the ordinary members of the Council can be a military officer. If, at the time of his appointment, a member is a military officer, he must resign his command. He cannot be employed in military duties during the tenure of his office as member of the Viceregal Council. The qualifications of only four of the six ordinary members are thus laid down by law, so that there is a discretion in the appointment of the remaining two.

Besides these six ordinary members the Secretary of State in Council invariably exercises his discretionary power to appoint the Commander-in-Chief in India to be an extraordinary member of the Governor-General's Executive Council: the Governors of Madras, Bombay and Bengal are also entitled to be extra-ordinary Members whenever the Council assembles in their respective presidencies. The maximum strength of the Council can thus be eight (excluding the Viceroy); usually it consists of seven members.

The presence of an Indian gentleman in the Viceroy's Council is not secured by any legal provision; on the other hand Indians are not by law debarred from holding these offices (*cf.* Sec. 96 of the Government of India Acts, 1915 and 1916—"No native of India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth,

descent, colour, or any of them, be disabled from holding any office under the Crown in India"). As Lord Morley said in one of his speeches on the Indian Councils Bill—"The absence of an Indian member from the Viceroy's Executive Council can no longer, I think, be defended. There is no legal obstacle or statutory exclusion. The Secretary of State can tomorrow, if he likes, if there is a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian member." Lord Morley did not hesitate to give effect to his liberal intention, and he forthwith appointed Mr. (now Sir) S. P. Sinha, in March 1909, to the post of Law Member of the Governor-General's Council. This appointment carried a step further the policy adopted in 1907, when two Indians were given seats in the Secretary of State's Council. In pursuance of the same policy an Indian has been placed on each of the Executive Councils of Madras, Bombay, Bengal, and Bihar and Orissa. It should be noted in this connection that there is no statutory provision to prevent the majority or even the entirety of the Executive Councils of the Governor-General, Governors or Lieutenant-Governors from being composed of Indians, provided of course they fulfil the statutory requirements regarding services etc.

The six ordinary members of Council hold charge, respectively of the Departments of:—(1) Home Affairs; (2) Revenue and Agriculture, and Public Works; (3) Commerce and Industry, and Railways; (4) Education, (5) Finance and (6) Law.

(1) The Home Department controls the general administration of British India and deals with internal politics, law and justice, jails, police, and a number of other subjects.

(2) The Department of Revenue and Agriculture deals very largely with questions concerning land: it supervises the collection of the land revenue: it sees that the assessments are made on the best and most equitable basis. Another important duty is to supervise the arrangements made by the Local Governments for famine relief, and also to encourage the development of scientific agriculture. The Department of Public Works deals with irrigation works, roads and public buildings.

(3) The Department of Commerce and Industry was created by Lord Curzon. The supervision of all industrial projects in India, the collection and distribution of commercial intelligence, the management of the post office and telegraphs

customs, ports and merchant shipping, mining and factories are all committed to the charge of this Department. It is also expected to regulate the trade of the country and to interfere, when necessary, in the interests of health and humanity.

(4) The Department of Education was created in 1910. It deals mainly with education, hospitals, public health, municipalities and local boards and ecclesiastical matters. As all these matters fall within the jurisdiction of the various provincial governments, the work of the Department is chiefly of a supervising and controlling nature; it has also to formulate the policy of the Government of India regarding Education, Sanitation and Local Self-Government.

(5) The Finance Member has powers of supervision over all matters of finance and examines all matters placed before the Council from the financial point of view. He deals with questions relating to the salaries, leave, and pensions of public officers; and with currency and banking. His Department supervises and controls some of the sources of "separate revenue"—e.g., opium, stamps, and assessed taxes, though the local management of these is in the hands of the subordinate Governments—and it directly administers the Mint and Assay Departments. The necessary supervision over the financial affairs of the provincial and local authorities is maintained by the provincial Accountant-General and his officers who are responsible to the Comptroller and Auditor General.

It may be interesting in this connexion to compare the position and functions of the Indian Finance Member with those of the English Chancellor of the Exchequer.* In the United Kingdom the Chancellor of the Exchequer is the responsible and active chief of the revenue adminis-

* "Theoretically the position of the Finance Member of Council is, except in a few details, very much the same as that of the Chancellor of the Exchequer in England, but there can be no doubt, I think, that the Financial Department in India does not occupy the same predominant position in India that the Treasury does in England, because of the fact that the Chancellor of the Exchequer is responsible to Parliament and has to defend any measure he may bring forward before a body of men, of whom a considerable number are there purposely with the object of opposition; and also because of the Prime Minister being usually the head of the treasury, and a leader of Parliamentary opinion being almost always chosen for the post of the Chancellor of the Exchequer."—*Lord Cromer's evidence before the Welby Commission (August 4, 1896)*

tration. The two great revenue boards, which manage and control the collection of taxes throughout the Kingdom, sit in London and their Chairmen are in constant communication with him. He answers in Parliament for their acts, and appeal from their decision lies to him, as wielding the powers of the Board of Treasury. The Post Office, including the Telegraph Department, the Woods and Forests, the Mint, and other minor revenue offices, are also subject to him financially. The returns furnished to him weekly, monthly and quarterly, enable him to follow closely fluctuations in receipts and he has at hand the heads of the revenue offices to assist him in ascertaining the causes of fluctuation and in forecasting the progress of his receipts. Further, he has, in intercourse with the chief expert officers, ample opportunity for learning defects in revenue laws or in the administration of the revenue department. Thus he is not only invested with the authority of Chief Officer of the Revenue, but he has the means of exercising that authority directly and effectively, and the personal impress which Chancellors of the Exchequer have left on the financial administration of the past has enabled holders of the office to discharge effectively the powers entrusted to them. The Chancellor of the Exchequer works the financial machine himself.

The revenue system of India is organized upon a different principle. Owing to the vast extent of territory, and the necessary partition of the country into separately organized provinces, the Finance Minister has not to the same degree as the Chancellor of the Exchequer direct control over the departments entrusted with the collection and management of the revenues. For the same reason, his sources of information are not as easily or as immediately accessible. The larger area over which his operations extend makes it impossible for him to learn details by correspondence, by summoning officers from distant centres, or by visiting them himself as speedily as is possible within the narrower limits of the United Kingdom. But although centralisation in finance suits a comparatively small and homogeneous state, decentralisation is more convenient for an immense territory, and for races varying in religion, in language, and in degrees of civilisation. Sir David Barbour says, in illustration of this point, that Europe could not be governed in detail from one capital; and Lord Cromer contends that it is impossible for one central authority to enforce economy on a continent such as India.

(6) The member of Council who is required to be a Barrister

of not less than five years' standing is usually styled the Law Member. The first holder of the post was Lord Macaulay. The functions of the Department presided over by him are to prepare the drafts of all legislative measures introduced into the Governor-General's Council, to consider, and in some cases to determine, the form of regulations submitted under sec. 71 of the Government of India Act (1915) and of the rules and regulations made under powers given by Acts of the Indian Legislative Council, to consider Bills and Acts of the local legislatures with reference to penal clauses and other special points, and to advise other departments of the Government on various legal questions. The Law Member of the Council is an *ex officio* member of the Select Committees to which Bills are referred.

Railway administration is committed to a Railway Board, which is a separate department of the Government of India under the member for Commerce and Industry. Foreign affairs *i.e.* matters concerning the Native States and external politics are retained by the Viceroy himself—he is his own Foreign Minister; but he is assisted by two Secretaries—the Political Secretary dealing with all questions concerning Native States, and the Foreign Secretary confining himself to purely foreign affairs. Military affairs are dealt with by the Commander-in-Chief who is thus his own War Minister.

The Functions of the Council.—The Council usually meets once a week, but special meetings may be called at any time at such places (generally Simla and Delhi) as the Governor-General in Council may fix. The meetings are private, and the procedure is of the same informal kind as at a meeting of the pre-war English Cabinet, the chief difference being that one of the Secretaries to the Government usually attends during the discussion of any question affecting his department and takes a note of the orders passed. [This small analogy must not be taken to mean that this form of Council Government is Cabinet Government, for the latter as we have seen, implies Government by a body of people constitutionally responsible to the legislature—a thing which is absent in the case of the Indian Executive.] In theory, members of Council have no power to act otherwise than in Council or by the implied authority of the Governor-General in Council. In practice under the rules for the disposal of business, a member passes orders, without bringing the matter before the Council, in minor cases. All important matters, and specially cases where two Departments differ in opinion, or a Local

Government is overruled, are referred to the Governor-General, and orders are passed either by him or by the whole Council. Questions involving large issues of general policy are always settled in Council. If there is a difference of opinion, the vote of the majority prevails, subject to the power of the Governor-General referred to above, to overrule the Council in exceptional cases. If the votes are equally divided, the Governor-General, or in his absence the senior member present, has a casting vote.

The Report of the Royal Commission on Decentralisation in India gives the following authoritative description of the manner in which the business of the Government of India is transacted :—

"In regard to his own department, each Member of Council is largely in the position of a Minister of State, and has the final voice in ordinary departmental matters. But any question of special importance and any matter in which it is proposed to overrule the views of a local Government, must ordinarily be referred to the Viceroy. This latter provision acts as a safeguard against undue interference with the local Governments, but it necessarily throws a large amount of work on the Viceroy. In the year 1907-08, no less than 21.7 per cent of the cases which arose in, or came up to, the Home Department required submission to the Viceroy. The Home Department is, however, concerned with questions which are, in a special degree, subject to review by the Head of the Government, and we believe that in other departments the percentage of cases referred to the Viceroy is considerably less. Any matter originating in one department which also affects another must be referred to the latter and in the event of the departments not being able to agree, the case would have to be referred to the Viceroy.

The Members of Council meet periodically as a Cabinet—ordinarily once a week—to discuss questions which the Viceroy desires to put before them, or which a Member who has been overruled by the Viceroy has asked to be referred in Council. The Secretary in the department primarily concerned with a Council-case attends the Council for the purpose of furnishing any information which may be required of him. If there is a difference of opinion in the Council, the decision of the majority ordinarily prevails, but the Viceroy can overrule a majority if he considers that the matter is of such grave importance as to justify such a step.

Each departmental office is in the subordinate charge of a Secretary whose position corresponds very much to that of a permanent Under-Secretary of State in the United Kingdom, but with these differences, that the Secretary as above stated, is present at Council meetings, that he attends on the Viceroy, usually once a week, and discusses with him all matters of importance arising in his department : that he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the departmental Member of Council : and that his tenure of office is usually limited to three years."

It is sometimes thought that the Government of India is synonymous with Government by the Viceroy who is its

responsible head. The error in this view has been thus exposed by Lord Curzon who, in one of his farewell speeches in India, said—"Never let it be forgotten that the Government of India is conducted not by an individual but by a committee. No important act is taken without the assent of a majority of that committee. In practice this cuts both ways. It is the tendency in India as elsewhere, but much more in India than anywhere else that I have known, to identify the acts of Government with the head of the administration. The Viceroy is constantly spoken of as though he and he alone were the Government. This is, of course, unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him ; for he may have to bear the entire responsibility for administrative acts or policies which were participated in and perhaps originated by them. * * * The Viceroy has no more weight in his Council than any individual Member of it."*

There is much truth in Lord Curzon's view of the powers and position of the Viceroy in his relations with his Council. Though the Governor-General has the power to dispense with his Council, it is not always easy to exercise it. As the Mesopotamia Commission's Report says—"In India the power of the Governor-General to dispense with his Council is much more circumscribed. The Government of India is throughout the Statute invariably designated as the Governor-General in Council. If the Governor-General is away from his Council on tour he has all the powers which he could exercise if he was with his Council, and, moreover, he has the power, when with the Council, of over-ruling them on certain questions, if the majority of them differ from him. But the Members of the Secretary of State's Council and of the Governor-General's Council have a statutory right of protesting in writing against any action of which they disapprove. The protest must be in accordance with their expressed objections in Council, and such written protest can be called for and laid before Parliament. The intention of Parliament in setting up the Government of India upon this basis seems to have been a wish to associate the Secretary of State and the Governor-general (who under the conditions existing in this country would probably be politicians) with Councils of trained Indian administrators ; and the power of protest was doubtless given so that each

* Lord Curzon's Indian Speeches, Vol. II., p. 299.

Council might be a check upon the Secretary of State, or the Governor-General, against taking impulsive, or in the view of the Council, improper action."

Functions of the Government of India.—The functions of the Government of India have been thus described in the Report of the Royal Commission upon Decentralization in India :—

"The functions of the Government in India are, in many respects, wider than in the United Kingdom. The Government claims a share in the produce of the land ; and save where (as in Bengal), it has commuted this into a fixed land tax, it exercises the right of periodical reassessment of the cash value of its share. In connection with its revenue assessments, it has instituted a detailed cadastral survey and a record of rights in the land. Where its assessments are made upon large landholders, it intervenes to prevent their levying excessive rents from their tenants ; and in the Central Provinces it even takes an active share in the original assessment of landlords' rents. In the Punjab, and some other tracts, it has restricted the alienation of land by agriculturists to non-agriculturists. It undertakes the management of landed estates when the proprietor is disqualified from attending to them by age, sex or infirmity, or occasionally, by pecuniary embarrassment. In times of famine it undertakes relief works and other remedial measures upon an extensive scale. It manages a vast forest property, and is a large manufacturer of salt and opium. It owns the bulk of the railways of the country, and directly manages a considerable portion of them ; and it has constructed, and maintains, most of the important irrigation works. It owns and manages the postal and telegraph systems. It has the monopoly of note issue, and it alone can set the mints in motion. It acts, for the most part, as its own banker, and it occasionally makes temporary loans to Presidency Banks in times of financial stringency. With the co-operation of the Secretary of State it regulates the discharge of the balance of trade as between India, and the outside world, through the action of the India Council's drawings. It lends money to municipalities, rural boards and agriculturists, and occasionally to the owners of historic estates. It exercises a strict control over the sale of liquor and intoxicating drugs, not merely by the prevention of unlicensed sale, but by granting licenses for short periods only, and subject to special fees which are usually determined by auction. In India, moreover, the direct responsibilities of Government in respect to

police, education, medical and sanitary operations, and ordinary public works, are of a much wider scope than in the United Kingdom. The Government has further very intimate relations with the numerous Native States which collectively cover more than one-third of the whole area of India, and comprise more than one-fifth of its population. Apart from the special functions narrated above, the government of a sub-continent containing nearly 18,00,000 square miles and 300,000,000 people, is in itself an extremely heavy burden, and one which is constantly increasing with the economic development of the country and the growing needs of populations of diverse nationality, language and creed."

Relations between the Secretary of State and the Viceroy—The question of the relation between the Secretary of State and the Viceroy was raised during the Viceroyalty of Lord Northbrook, when Lord Salisbury was Secretary of State. Mr. Bernard Mallet's memoir of Lord Northbrook contains the following noteworthy remarks upon the subject by Lord Cromer who, as Major Baring, was Private Secretary to Lord Northbrook :—

"There can be no doubt that Lord Salisbury's idea was to conduct the Government of India to a very large extent by private correspondence between the Secretary of State and the Viceroy. He was disposed to neglect, and also, I think, to underrate the value of the views of Anglo-Indian officials. This idea inevitably tended to bring the Viceroy into the same relation to the Secretary of State for India as that in which an Ambassador or Minister at a foreign Court stands to the Secretary of State for Foreign Affairs...Lord Northbrook's general view was the exact opposite of all this, and I am strongly convinced that he was quite right..... He recognized the subordinate position of the Viceroy, but he held that Parliament had conferred certain rights not only on the Viceroy, but on his Council which differentiated them in a very notable degree from subordinate officials such as those in the diplomatic service.....Lord Northbrook regarded the form of Government in India as a very wise combination which enabled both purely English and Anglo-Indian experience to be brought to bear on the treatment of Indian questions. He did not by any means always follow the Indian official view ; but he held strongly, in the first place, that to put aside that view and not to accord to the two Councils in London and Calcutta their full rights was unconstitutional in this sense that, though the form might be preserved, the spirit of the Act of Parliament regulating the Government of India would be evaded. In the second place, he held that for a Viceroy or a Secretary of State without Indian experience to overrule those who possessed such experience was an extremely unwise proceeding, and savoured of an undue exercise of that autocratic power of which he himself was very unjustly accused.

The self-same question of the relations between the Secretary of State and the Viceroy was mooted by the Rt. Hon. Mr. Montagu, then Under-Secretary of State for India, in one of

his speeches introducing the Indian Budget. He said—"The relations of a Viceroy to the Secretary of State are intimate, and responsible. The Act of Parliament says—'The Secretary of State in Council shall superintend, direct, and control all acts, operations and concerns which in any way relate to or concern the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges whatever out of or on the revenues of India.' It will be seen how wide, how far-reaching, and how complete these powers are. Lord Morley and his Council, working through the *agency* of Lord Minto, have accomplished much" etc.

Sir Valentine Chirol, in his book on "*The Indian Unrest*", points out that there are two great objections to the above doctrine of "*agency*": in the first place it ignores one of the most important features of the Governor-General's office—*viz.*, that he is the direct and personal representative of the King Emperor, and in that capacity, at any rate, it would be improper to describe him as the "*agent*" of the Secretary of State. In the second place, it ignores equally another distinctive feature of his office, especially important in regard to his relations with the Secretary of State *viz.* that, in his executive as well as in his legislative capacity, he is not a mere individual, but a corporate body—the Governor-General in Council.

Lord Morley in reviewing Sir Valentine Chirol's book in the *Nineteenth Century and After* in an article headed "*British Democracy and India*" says:—"He (Sir Valentine Chirol) tries at making out a case for limitation of the Indian Secretary's power, authority and duties, so severe as to make such responsibility perilously shadowy and secondhand." He then goes on to refute Sir Valentine Chirol's "*Man on the spot theory*".

In 1858 Queen Victoria announced to the princes, Chiefs and people of India that she had taken upon herself the government of the territories in India heretofore administered in trust for her by the East India Company, and further—"We reposing especial trust and confidence in the loyalty, ability, and judgment of our right trusty and well beloved cousin—constitute and appoint him to be our first Viceroy and Governor-General in and over our said territories and to administer the Government thereof in our name, and generally to act in our name and on our behalf, *subject to such orders and regulations as he shall from time to time, receive through one of our Principal Secretaries of State.* The principle so definitely announced has been uniformly maintained. The Royal Warrant appointing the Governor-General always contains the provision thus set forth in the Mutiny Proclamation—"Now know that we, reposing especial

trust and confidence in the Fidelity, Prudence, Justice, and circumspection of you the said Victor, Alexander, Earl of Elgin and Kincardine, have nominated, made, constituted and appointed you to be Governor-General of India.....to take upon you, hold and enjoy the said office.....during our Will and Pleasure, subject nevertheless to such instructions and directions as you.....shall, as Governor-General of India in Council from time to time receive under the hand of one of Our Principal Secretaries of State'. This language of the Mutiny Proclamation, and of the Warrants of Appointment settles the question so far as the Governor-General in Council is concerned.

The position of the Secretary of State under the statutes is quite as clear, though it takes a few more words to set it out. The law of 1858 calling the Indian Secretary into existence enacts that 'save as herein otherwise provided, one of her Majesty's Principal Secretaries of State shall have and perform all such or like powers and duties in anywise relating to the Government of Revenues of India, and all such of the like powers over all officers appointed or continued under this Act as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company.' This section continues to the Secretary of State all the powers of the Company, and the relations of the Company to their Governor-General were defined in the Regulating Act of 1772: 'The said Governor-General and Council for the time being shall, and they are hereby directed and required to, obey all such orders as they shall receive from the Court of Directors of the said United Company.' Then by the Act of 1784, Pitt called into existence the body of Commissioners who became known as the Board of Control. Their business as set forth eight years later, was 'to have and be invested with full power and authority to superintend, direct and control all acts, operations and concerns which in any wise relate to or concern the civil or military government or revenues of the said territories and acquisitions in the East Indies.' All these powers and duties, formerly vested either in the Board of Control, or in the Company, the Directors, and the Secret Committee in respect of the government and revenues of India, were to be inherited by the Indian Secretary. In short, as it is plainly summed up in that magnificent enterprise, the *Imperial Gazetteer of India*, composed, I think, officially at Simla, the Secretary of State "has the power of giving orders to every officer in India, including the Governor-General."

In view of the constitutional reforms initiated in 1909 by Lord Morley himself and the consequently growing share of Indians in legislation and administration, there is not much force in Lord Morley's argument that the *Man on the spot theory* would lead "to the surprising result of placing what is technically called the Government of India in a position of absolute irresponsibility to the governed." Besides, Lord Hardinge's speech and action in connection with the South African question and the rejection by the House of Lords of the proposal for creating an Executive Council in the United Provinces amply prove the truth of Sir Valentine Chirol's statement—"What we may and probably must look forward to at no distant date is that with the larger share in legislation and administration secured to Indians by

such measures as the Indian Councils Act, the Government of India will speak with growing authority as the exponent of the best Indian opinion within the limits compatible with the maintenance of British rule, and that its voice will, therefore, ultimately carry scarcely less weight at home in the determination of Indian policy than the voice of our self-governing Dominions already carries in all questions concerning their internal development." The following remarks of the *London Times* (April 28, 1916) in its review of Lord Hardinge's Viceroyalty are also in the same strain :—"A great new principle lay behind that simple little speech delivered by Lord Hardinge (at Madras). Whatever form the relations between Great Britain and India may eventually assume, it is reasonably certain that future Viceroys and future Governments of India must more and more identify themselves with Indian interests, even when they seem to conflict at times with the policy of the Home Government. They must be truly Indian Governments, which implies some change of spirit and outward attitude. It also implies a great lessening of Whitehall control."

Financial control of the Secretary of State over the Government of India :

A. Apart from specific restrictions by the Secretary of State on the spending powers of the Government of India, his sanction is required :—

- (1) To any reduction or increase of taxation or other measure which would substantially affect the Indian revenues ;
- (2) To any important new departure in financial policy, such as matters relating to currency operations or debt ;
- (3) Generally, to any matters which raise important administrative questions, or involve considerable expenditure, or outlay of an unusual or novel character.

B. As regards specific restrictions relating to certain classes of expenditure, the Secretary of State's sanction is required to—

- (1) The construction (subject to certain minor exceptions) of public works from borrowed funds ;
- (2) The construction of a public work charged to revenue which is estimated to cost more than £ 83,000 (Rs. 12½ lakhs) including establishment charges ;

- (3) The construction of any railway, except certain minor branch lines ;
- (4) The creation of an appointment in India of which the salary exceeds Rs. 500 a month ;
- (5) The raising of the salary of an existing appointment to an amount exceeding Rs. 750 a month ;
- (6) The revision of an establishment at a cost of more than Rs. 50,000 a year.
- (7) The sanction, for a period of more than 2 years, of a temporary appointment or deputation involving a salary (including deputation allowance) exceeding Rs. 500 a month ;
- (8) The incurring of expenditure (such for instance as that involved in the grant of pensions in excess of those admissible under the rules) for which it is provided that the sanction of the Secretary of State is necessary.

C. Further, the Government of India cannot now without the sanction of the Secretary of State—

- (1) Make good to Provincial Governments enjoying financial settlements, loss to their revenues consequent on remission of taxation ; or give them grants-in-aid for important measures of administrative reform, or any large money grant save for the purpose of maintaining financial equilibrium in the face of some special calamity such as famine or plague ;
- (2) Make a loan to a Native State in excess of 5 lakhs, or incur any considerable outlay for the direct benefit of such a State ;
- (3) Incur expenditure on the construction of churches, outside the amounts admissible under the Public Works Code ;
- (4) Incur charges for—
 - (a) State ceremonies, and the entertainment at the public charge of distinguished visitors, in excess of a lakh of rupees ;
 - (b) Grant of political pensions to non-officials, in excess of Rs. 1000 a year ;
 - (c) Grants to charitable and religious institutions, in excess of Rs. 10,000 a year, or Rs. 50,000 in the case of a non-recurring grant ;
 - (d) New measures involving any appreciable addition to military expenditure.

Organization of the Provincial Governments and their general relations with the Government of India.—Each of the fifteen provinces into which British India is now divided has its own local Government. In constitution and status the local Governments differ widely. All of them alike are under the superintendence and control of the Governor-General in Council, but the degree to which the authority of the Governor-General in Council is in practice brought to bear upon them is graduated in accordance with the differences in status between the provincial Governments.

Recent changes have increased the number of provinces and added to the variety of local Governments. Fifteen years ago the provincial Governments could be simply classified under three heads: first, the Presidency Governments of Madras and Bombay, administered by Governors with executive as well as legislative councils; secondly, the lieutenant-governorships of Bengal, the United Provinces, the Punjab, and Burma, with legislative but without executive councils; and, thirdly, the Chief Commissionerships, with neither executive nor legislative councils. The redistribution of territories in 1905 did not affect this classification, except to the extent of adding Eastern Bengal and Assam to the list of lieutenant-governorships.

A new type of provincial government was brought into existence by the appointment in November 1910 of an executive council to assist the Lieutenant-Governor of Bengal. Its introduction was intimately connected with the changes made in the legislative councils in 1909. The Government of India, in their letter of the 1st October, 1908, dealing with the proposed changes, wrote as follows: "In conclusion we have one more observation to make. We recognise that the effect of our proposals will be to throw a greater burden on the heads of local Governments, not only by reason of the actual increase of work caused by the longer sittings of the legislative councils, but also because there will be considerable responsibility in dealing with the recommendations of those councils. It may be that experience will show the desirability of strengthening the hands of lieutenant-governors in the larger provinces by the creation of executive councils..."*

* Other arguments for creating Executive Councils are adduced in Lord Crewe's despatch dated July 3rd, 1914 in reply to the despatch of the Government of India recommending the creation of an Executive Council in the United Provinces—

"In the three Presidencies and in the important province of Behar and Orissa under a Lieutenant-Governor, the Council form of government

The Secretary of State, in reply, expressed himself as being much impressed by the considerations advanced, and stated that he proposed to ask for power to create executive councils from time to time as might be found expedient. The desired powers were given by sec. 3 of the Indian Councils Act, 1909, which authorised the Governor-General in Council, with the approval of the Secretary of State in Council, by proclamation, to create an executive council in Bengal, and similarly to create an executive council in any other province under a lieutenant-governor, provided in this case that a draft of the proposed proclamation must be laid before Parliament, and that "if an address is presented to His Majesty by either House against the draft or any part thereof, no further proceedings shall be taken thereon." †

Under the powers conferred by the Act of 1909, an executive council for Bengal was established on the 18th November, 1910. The maximum number of members was fixed by the Act at four. The Governor-General's proclamation fixed the actual number, in the first instance, at three, and laid down that, as in Madras and Bombay, two at least of the members must be "persons who at the time of their appointment have been in the service of the Crown in India for at least 12 years." It also conferred on the Lieutenant-Governor a power similar to that enjoyed by the Governor-General and the Governors of Madras and Bombay of overruling his council "in any case which in the judgment of the Lieutenant-Governor is of high importance and essentially affects the public interest and welfare." Otherwise the opinion of the majority was to prevail, the Lieutenant-Governor having a casting vote. Appointments to a lieutenant-governor's exe-

is now permanently established to the general contentment of the governed. In the form in which these Councils are now constituted, they at once give an opportunity for the association of Indians in the highest position of authority, and provide that in the general conduct of affairs the opinions, the sentiments, and even the prejudices of the Indian community should be given due weight. They provide an element of continuity that is necessarily wanting in a one-man government and they give indispensable relief to the head of the Government in the proceedings of his Legislative Council and in the detailed administration of the province. The extension of Council government to a province as important and, in many respects, as advanced as the United Provinces of Agra and Oudh is, I am convinced, inevitable in the not remote future."

† When under this provision a proclamation was issued creating an Executive Council for the United Provinces, an address was presented to His Majesty by the House of Lords against it and the project had to be dropped.

cutive council are made by the Governor-General, with the approval of His Majesty.

From the 1st April 1912 the Governor-General ceased to be, as he had hitherto been in theory, Governor of the Presidency of Fort William in Bengal, and the reconstituted province of Bengal became a Presidency Government under a separate Governor. The Government of India Act of 1912 placed the Governor and Council in Bengal on the same level, and made them subject generally to the same enactments, as the Governors and Councils in Madras and Bombay. The same Act made applicable to the new province of Bihar and Orissa the provisions of the Act of 1909 relating to the constitution of an executive council in Bengal. An executive council was accordingly established for Bihar and Orissa with effect from the 1st August, 1912, with a constitution similar to that of the council established in Bengal in 1910. It consists at present of three members.

Another new type of local government was brought into existence in November 1912, and again in 1913, when provision was made respectively for the establishment of a legislative council to assist the Chief Commissioners of Assam and the Central Provinces under the authority of the Government of India Act of 1912. The local Governments at the present time, therefore, fall into five classes, the first including Madras, Bombay, and Bengal, administered by Governors in Council; the second including only Bihar and Orissa, administered by a Lieutenant-Governor who, like the Governors, has an executive as well as a legislative council; the third consisting of the remaining lieutenant-governorships of the United Provinces, the Punjab and Burma with legislative councils only; the fourth including Assam and the Central Provinces, the two Chief Commissionerships so far provided with legislative councils; and the fifth comprising the remaining Chief Commissionerships, of which the North-West Frontier Provinces, British Beluchistan, and the new province of Delhi are the most important. By custom heads of local Governments and the members of the executive council (if there are any) are appointed for a term of five years.

The Governorships.—The two provinces of Madras and Bombay always occupied a special position, as representing the old presidencies of the same names, which were independent of, and on a footing of equality with, the third Presidency of Fort William (Bengal) until they were made subject to the control of the Governor-General and Council of that

presidency, in certain matters, by the Regulating Act of 1773. The authority of the central government was extended by subsequent Acts, and since 1833 the Governor-General in Council has had the general power of control over, 'the whole civil and military government' of British India. The Governments of Madras, Bombay and Bengal, nevertheless, still retain the following vestiges of their separate origin and former independence :—

- (i) They are invariably under a Council Government and the ordinary business of Government is distributed between the members of the Councils in much the same way as in the larger Council of the Governor General, but the distinction of portfolios is not so definite. The Governor can, like the Viceroy, overrule his colleagues in cases of emergency: otherwise decisions of the Governor in Council are by a majority.
- (ii) They have the right of direct correspondence with the Secretary of State, except in matters which raise financial issues, and can appeal to him against the orders of the Government of India; but such an appeal must go through, or be communicated to, that Government.
- (iii) They have full discretion in the selection for certain important posts, which in other Provinces rests finally with the Government of India, e.g., nominations to the Board of Revenue and to the Provincial Legislative Councils, and the appointment of Chief and Superintending Engineers in the Public Works Department, and Conservators of Forests.
- (iv) They have, in practice, a free hand in the details of their district land-revenue settlements, which in other Provinces are subject to control by the Government of India. Similarly, they are less supervised in forest administration.

The civil administration of each Presidency is conducted by a Governor in Council, whose powers and duties are regulated by Acts of Parliament. The governors are appointed by the Crown and are usually chosen from among persons of high rank and political experience in England.

The members of the executive councils are appointed by warrant under the Royal Sign Manual. Until 1909 the maximum number of members was three and 12 years' previous service under the Crown in India was an essential qualification in every case. Each council in practice consisted of two members of the Indian Civil Service. Under the Indian Councils Act, 1909, the number of members is now "such number, not exceeding four, as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least 12 years." Under this provision each council was enlarged in 1910 by the addition of an Indian member. The power to increase the total number of members to four has not so far been exercised.

As has already been mentioned, the new province of Bengal has been placed on the same footing as Madras and Bombay.

The Lieutenant-Governorships.—The constitution of the Government of the new province of Bihar and Orissa has been described above. In the three remaining lieutenant-governorships—the United Provinces, the Punjab and Burma—there is no executive council, and the lieutenant-governor stands alone at the head of the local administration. The lieutenant-governors are, as in the case of Bihar and Orissa, appointed by the Governor-General, subject to the approbation of the Crown. They are chosen from officers who have been at least 10 years in the service of the Crown in India (in practice from the Indian Civil Service). In the absence of executive councils, the lieutenant-governors have special assistance in regard to some of the most important branches of administration, in the shape of a Board of Revenue consisting of two members in the United Provinces and Financial Commissioners in the Punjab and Burma.

The points in which a Lieutenant-Governor differs from a Governor may be summarised as follow—(1) he is styled only "His Honour" while a governor is addressed as "His Excellency"; (2) he is appointed by the Viceroy from among the members of the Indian Civil Service, while a Governor is appointed by the Crown from among members of the aristocracy in Great Britain; (3) he may or may not have an Executive Council to assist him; (4) his powers are more narrowly circumscribed and he is subjected to more detailed interference by the Central Government; (5) he

has no right to communicate directly with the Secretary of State.

The Chief Commissionerships.—The Chief Commissioners, by whom the remaining provinces are administered, have a lower status than the lieutenant-governors. Their appointment is not specifically provided for by Act of Parliament. The territories under their charge are in theory “under the immediate authority and management of the Governor-General”, who appoints Chief Commissioners at his discretion and delegates to them such powers as are necessary for the purposes of administration.

So far, however, as the application of Indian enactments is concerned, Chief Commissioners are, by virtue of the definition contained in the General Clauses Act, 1897, and in Sec. 134 (Cl. 4) of the Government of India Act, 1915 and 1916, placed on the footing of local Governments, and in practice the powers of the Chief Commissioners of the Central Provinces and Assam are hardly inferior to those of a Lieutenant-Governor. The North-West Frontier Province and British Baluchistan are charges of less magnitude, and the Chief Commissioners are at the same time the Governor-General's Agents for dealing with tribes and territories outside British India. The four remaining provinces are small charges, not comparable in area with the rest, though the new province of Delhi has a special importance of its own. The Agent to the Governor-General in Rajputana and the Resident in Mysore are *ex officio* Chief Commissioners of Ajmere-Merwara and Coorg respectively, while the Superintendent of the Penal Settlement of Port Blair, from which the islands derive their administrative importance, is Chief Commissioner of the Andaman and Nicobar islands.

Relation of the Government of India to the Provincial Governments: The Governor-General in Council is responsible for the entire administration of British India, and for the control exercised in varying degrees over the native states. In practice, the Government of India retains in its own hands matters relating to foreign relations, the defences of the country, general taxation, currency, debt, tariffs, posts, telegraphs and railways.

Ordinary internal administration, the assessment and collection of the revenues, education, medical and sanitary arrangements, and irrigation, buildings and roads fall to the share of the provincial Governments. But in all these matters the Government of India exercises a general and constant control, and lays down lines of general policy.

Questions of policy or of special importance are submitted by the provincial Governments for the orders of the Governor-General in Council to whom also are submitted copies of the printed proceedings of the local Governments and of the administration reports of their main departments. The financial powers of the local Governments, in particular, are limited by definite and strict rules.

The Government of India employs, besides the controlling officers for departments which it directly administers, inspecting or advisory officers for some of the departments which are primarily left to the local Governments, such as the Inspector-General of Forests, and the Director-General of Archæology. There is, moreover, a wide field of appeal to the Government of India from officials or private persons who may consider themselves aggrieved by the action of a local Government.

The essential point to be borne in mind is that at present, even in matters primarily assigned to the provincial Governments, these act as the agents of the Government of India who exercise a very full and constant check over their proceedings. It is important to remember in this connection that the mutual relations of the Indian Governments are not those of states or colonies voluntarily associated in a federal system : the Government of India is what may be called a unitary and not a federal Government. In its relations with other Indian authorities, its power is supreme and undivided, and the local Governments act as its agents. In other words the local Governments perform certain duties which are entrusted to them by the Government of India. The Australian Commonwealth provides an example of a federal Government. In consequence of their geographical position and of their historical past, the states have been in favour of preserving, as far as possible, the autonomy of each and of avoiding undue centralization. The central or Federal Government of the Commonwealth of Australia only possesses certain powers which are strictly defined in the Commonwealth Act, whilst all those powers not mentioned therein are retained by the states. The proper way to speak of the relations between the Government of India and the local Governments is to say that they are based not on the principle of federalism, but on that of what in more recent times has come to be called the principle of devolution and decentralisation. This appears clearly in the evidence given by the late Sir Herbert Risley before the Royal Decentralization Commission :—

Q. In other words, the Government of India lay down the general principles, and the local Government is responsible for carrying them out ?

Ans. Yes ; but I should like to point out that you have not here the guiding factors which you have in certain other cases of Federal Governments. Where you have a Federal Government, which consist of so many sovereign states, these sovereign states gave up this and that and the other defined functions and kept every thing else, which makes the matter so much clearer. This is not the case in India. The Local Governments were never sovereign and independent. From 1833 up to the time of the Strachey decentralizations, the Government of India had everything in their own hands, and no Local Government could create the smallest appointment without sanction. Since then the Government of India has surrendered many functions, but each surrender requires a separate order, since the residuary authority rests with the Government of India and not with the Local Government, as is the case in most federations."

The control of the Government of India over the Provincial Governments is at present exercised in the following manner :—

(1) By financial rules and restrictions, including those laid down by Imperial departmental Codes ;

(2) By general or particular checks of a more purely administrative nature, which may (a) be laid down by law or by rules having the force of law, or (b) have grown up in practice.

(3) By preliminary scrutiny of proposed Provincial legislation, and sanction of Acts passed in the Provincial legislatures ;

(4) By general resolutions on questions of policy, issued for the guidance of the Provincial Governments. These often arise upon the reports of commissions or committees, appointed from time to time by the Supreme Government to investigate the working of departments with which the Provincial Governments are primarily concerned.

(5) By instructions to particular Local Governments in regard to matters which may have attracted the notice of the Government of India in connection with the departmental administration reports periodically submitted to it, or the proceedings-volumes of a Local Government.

(6) By action taken upon matters brought to notice by the Imperial Inspectors-General.

(7) In connection with the large right of appeal possessed by persons dissatisfied with the actions or orders of a Provincial Government.

Landmarks in the evolution of the Indian Legislatures.—(1) In British India it was originally the Executive Government itself that was empowered "to make regulations and ordinances," for the good government of the factories or territories at first acquired in India, "so as they be not repugnant to the laws and customs of the United Kingdom". The laws (known as "Regulations" up to 1833) could be passed by the Governor-General in Council or by the Governors of Madras and Bombay in Council : such regulations, however, were not to be valid or of any force until they were duly registered in the Supreme Court, with the consent and approbation of the Court of Directors (The earliest regulation bears date 17th April, 1780). An appeal from a regulation so registered and approved lay to the King in Council, but the pendency of such appeal was not allowed to hinder the immediate execution of the law. The Governments were bound to forward all such rules and regulations to England, power being reserved to the King to disapprove of them at any time within two years.

(2) By the Charter Act of 1833 the Governor-General's Council was augmented by a fourth or extraordinary member who was not entitled to sit or vote except at meetings for making laws and regulations. He was to be appointed by the directors, subject to the approval of the Crown, from among persons, not servants of the company. The first such member was Thomas Babington Macaulay. The Governor-General in Council was empowered to make "Laws and Regulations" for the whole of India, withdrawing from the Governors of Madras and Bombay all legislative functions, but leaving to them the right only of proposing draft schemes. Acts (not "Regulations" as heretofore called) passed by the Governor-General in Council were liable to be disallowed by the Court of Directors and were also required to be laid before Parliament, but no registration in India was necessary. It was also expressly enacted that they were to have the force of Acts of Parliament.

(3) In 1853 the Council of the Governor-General was again remodelled by the admission of the fourth or legislative member as an ordinary member for all purposes ; while six special members were added for the object of legislation only *viz.* one member from each of the four then existing Presidencies or Lieutenant-Governorships and also the Chief Justice and one of the judges of the Supreme Court. Thus the first Indian Legislative Council as constituted under the Act of 1853 consisted only of 12 members *viz.*, the Governor-General

and the four members of his Council, the commander-in-chief, and the six special members. The Governor-General was also empowered by this Act to appoint, with the sanction of the Court, two civilian members, but this power was never exercised. From this time onwards the sittings of the legislative council were made public and their proceedings officially published.

(4) By the Indian Councils Act of 1861 the power of legislation was restored to the Presidencies of Madras and Bombay, and a Legislative Council was appointed for Bengal, while the Governor-General in Council retained legislative authority over the whole of India. For legislative purposes the Governor-General's Council consisted of five ordinary members, the commander-in-chief as extraordinary member, and the Governor or Lieutenant-Governor of the Province in which the Council happened to meet, together with from 6 to 12 members nominated for a period of two years by the Governor-General. Of these last not less than one-half was to be non-official persons, and in practice some of them were always Indians. The extent of the powers of the Legislative Council was thus defined—

“For all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty.”

Certain subjects were expressly reserved for Parliament, including the several statutes regulating the constitution of the Indian Government, any future statute affecting India, any statute for raising money in England, the Mutiny Act, and the unwritten laws and constitution of England, so far as regards allegiance and sovereignty. No measure could be introduced without the sanction of the Governor-General if it affected the public debt or revenues, the religious usages of the people, military discipline or foreign relations. No law was to be valid until the Governor-General had given his express assent to it ; and an ultimate power of signifying disallowance was reserved to the Crown. In cases of emergency the Governor-General, apart from the Legislative Council, could make “ordinances for the peace and good government” of the country, which had the force of laws for six months. Local Legislatures were constituted for Madras and Bombay, in addition to the ordinary Councils, consisting in each Presidency of the Advocate-General, together with from four to eight other persons, of whom one-half were

to be non-official, nominated by the Governors. Besides the subjects forbidden to the Governor-General's Council, these local legislatures were not to take into consideration proposals affecting general taxation, the currency, the post office and telegraphs, the penal code, patents and copyrights. The assent of the Governor-General as well as that of the Governor was necessary to give validity to any law. A similar local legislature was directed to be constituted for the lower Provinces of Bengal and power was given to constitute Legislative Councils for what was known as the North-Western Provinces and for the Punjab and for any other Lieutenant-Governorship that might be formed in the future. Such were the chief provisions of the Indian Councils Act of 1861.

(5) The next landmark in the evolution of the Indian legislature was the passage of the Indian Councils Act of 1892. The changes introduced by this Act were, broadly speaking, three in number. The first was the concession of the privilege of financial criticism in both the supreme and Provincial Legislative Councils ; the second was the concession of the right of asking questions ; the third made an increase in the size of the Legislative Councils and changes in the method of nomination—changes which foreshadowed the introduction of the elective element into the Indian legislatures.

(6) Finally, we come to the epoch-making constitutional reforms of 1909 associated with the names of Lords Morley and Minto (*See "Documents" Vol. I.*) The details of the Indian Councils Act of 1909 and the Council Regulations are given in the following pages.

The Constitution of the Indian Legislative Council :—For purposes of legislation the Governor-General's Council consists of the members of his executive council and the Chief Commissioner of Delhi (when the Council meets at Delhi) or the Lieutenant-Governor of the Punjab (when the Council meets at Simla), * with 60 Addi-

* This is according to Sec. 63 (cl. 4) of the Government of India Acts, 1915-1916 which runs thus—"When and so long as the Indian Legislative Council assembles in a province having a Lieutenant-Governor or Chief Commissioner he shall be an additional member of the Council, in excess, if necessary, of the aggregate number of nominated or elected additional members prescribed by this section". From this it appears that if the Indian *Legislative* Council assembles in any part of Bengal, Bombay or Madras, the Governor cannot be a Member of it, though he becomes an extraordinary Member of the Governor-

tional members of whom 27 are elected and 33 are nominated. Of the 33 nominated members not more than 28 may be officials, and 3 shall be non-official persons to be selected—

- (1) one from the Indian Commercial Community ;
- (2) one from the Mahomedan Community in the Punjab ; and
- (3) one from the landholders in the Punjab. The Regulations provide that it shall not be lawful for the Governor-General to nominate so many non-official persons that the majority of all the members of the Council shall be non-officials.

The elected portion of the Legislative Council consists of members elected by the non-official members of the provincial councils, by the Landholders, and by the Mahomedan communities, in the various provinces, with representatives of the Bengal and Bombay Chambers of Commerce.

We may here quote a few lines from §§ 63 and 64 of the Government of India Acts (1915 & 1916) :—

(1) At least one-half of the additional members of the Council must be persons not in the civil or military service of the Crown in India ; and, if any additional member accepts office under the Crown in India, his seat as an additional member shall thereupon become vacant.

(2) When and so long as the Indian Legislative Council assembles in a province having a Lieutenant-Governor or Chief-Commissioner, he shall be an additional member of the Council in excess, if necessary, of the aggregate number of nominated or elected additional members prescribed by this section.

(3) The additional members of the Council are not entitled to be present at meetings of the Governor-General's executive Council.

(4) The Indian Legislative Council shall assemble at such times and places as the Governor-General in Council appoints.

General's *Executive* Council (sec. 37 cl. 2) when and so long as it assembles in his province. This appears to be an anomaly of the Indian Constitution, though there may good reasons for maintaining it by statutory authority.

Who are eligible for election.—No person is eligible for election as a Member of the Indian Legislative Council if such person—

- (a) is not a British subject ; or
- (b) is an official ; or
- (c) is a female ; or
- (d) has been adjudged by a competent Civil Court to be of unsound mind ; or
- (e) is under 25 years of age ; or
- (f) is an uncertificated bankrupt or an undischarged insolvent, or
- (g) has been dismissed from Government service, or
- (h) has been sentenced by a Criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding 6 months, or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted, or the offender pardoned ; or,
- (i) has been debarred from practising as a legal practitioner by order of any competent authority ; or
- (j) has been declared by the Governor-General in Council to be of such reputation and antecedents that his election would, in the opinion of the Governor-General in Council, be contrary to the public interest.

In cases (g), (h), (i) and (j) the disqualification may be removed by an order of the Governor-General in Council in this behalf.

Any person who is to be elected by any constituency should himself belong to the constituency as a voter entitled to elect the candidate of that constituency. Every person elected or nominated must before taking his seat, make an oath or affirmation of his allegiance to the Crown. The ordinary term of office of an additional member is 3 years. A member elected or nominated to fill a casual vacancy sits only for the unexpired portion of his predecessor's term.

Who are eligible to vote at elections : the constituencies.—The constituencies which elect members to the Legislative Councils in pursuance of the Regulations of 1909 are so varied in their nature that it is impossible to generalise

about them. The positive qualifications both of electors and of candidates are fixed by the scheduled rules, but by the regulations females, minors, and persons adjudged to be of unsound mind are disqualified. We may, however, pay attention to the general principles on which the electorates have been framed: they are thus described in paragraph 8 of Lord Morley's famous Reform Despatch* of 1908—

In the circumstances of India "representation by classes and interests is the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils." You justly observe that "the principle to be borne in mind is that election by the wishes of the people is the ultimate object to be secured, whatever may be the actual machinery adopted for giving effect to it." You consider that for certain limited interests (Corporations of Presidency Towns, Universities, Chambers of Commerce, Planting Communities and the like) limited electorates must exist as at present; and you foresee no serious obstacle in carrying out arrangements for that purpose. Difficulties come into view, when you go beyond these limited electorates and have to deal with large and widespread interests or communities, such as the landholding and professional classes; or with important minorities, such as the Mahomedans in most provinces in India, and the Sikhs in the Punjab. You dwell upon the great variety of conditions in the various provinces of the Indian Empire, and the impossibility of applying any uniform system throughout, and your conclusion generally appears to be that class electorates should be framed where this is practicable and likely to lead to good results, and in their failure or defect, it will be necessary to have recourse to nomination.

The Functions of the Indian Legislative Council: (1) **Legislative Functions.**—Section 65 of the Government of India Acts (1915 and 1916) thus describes the powers and limitations of the Governor-General in Legislative Council—

(1) The Governor-General in Legislative Council has power to make laws—

- (a) for all persons, for all courts, and for all places and things, within British India; and
- (b) for all subjects of his Majesty and servants of the Crown within other parts of India; and
- (c) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and
- (d) for the government of officers, soldiers and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act; and

* See "*Documents*", Vol. I.

- (e) for all persons employed or serving in or belonging to the Royal Indian Marine Service ; and
- (f) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Governor-General in Legislative Council has power to make laws.

(2) Provided that the Governor-General in Legislative Council has not, unless expressly so authorized by Act of Parliament, power to make any law repealing or affecting—

- (i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act and any Act amending the same) ; or
- (ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India ;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

(3) The Governor-General in Legislative Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any high court.

Again, it is laid down in sub-section (2) of Sec. 67—

It shall not be lawful, without the previous sanction of the governor-general, to introduce at any meeting of the council any measure affecting—

- (a) the public debt or public revenues of India, or imposing any charge on the revenues of India ; or
- (b) the religion or religious rites and usages of any class of British subjects in India ; or
- (c) the discipline or maintenance of any part of His Majesty's military or naval forces ; or
- (d) the relations of the Government with foreign princes or states.

The net effect of the powers and restrictions relating to the Indian Legislative Council cannot be better described than in the words of Lord Selborne in the case of *Queen v. Burah*, (3 I. L. R. Calcutta Series, p. 63). He says—"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond these limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question: and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to enquire further, or to enlarge constructively those conditions and restrictions."

If we examine closely we shall find that the powers of the Governor-General in Legislative Council are actually more extensive than those of the Federal Parliament of Canada or any Dominion Parliament. As Professor Keith points out—"They cover not only the power to make laws for all persons, courts, places, and things within British India, which are the powers of a Dominion Parliament in a Unitary Dominion and which are, of course, much in excess of the powers of any Federal Parliament, but they include authority with regard to all British subjects and servants of the Crown in other parts of India, and all native Indian subjects of His Majesty within and beyond British India, the regulation of His Majesty's Indian forces, wherever serving, in so far as they are not subject to the Army Act—a power conferred by the Imperial Army Act also on colonial legislatures—the government of persons in the Royal Indian Marine Service within the limits of Indian waters, defined in Sec. 66 as the high seas between the Cape of Good Hope on the west and the Straits of Magellan on the east—a power only conceded

in 1911 to Dominion Parliament as regards Dominion naval forces—and, most remarkable of all, a power to repeal any Act of the Imperial Parliament passed prior to 1861, except any Act enabling the Secretary of State in Council to raise money in the United Kingdom. To Acts of Parliament after 1860 the doctrine of repeal does not apply and the Council may not pass a law affecting the authority of Parliament, any part of the unwritten law or constitution of the United Kingdom dealing with allegiance or the Sovereignty or dominion of the Crown over any part of British India. All these restrictions, however, apply equally to any Dominion Parliament, and the only specific restraint on the Council peculiar to itself is that it may not, without the previous approval of the Secretary of State in Council, empower any but a High Court to sentence to death a European British Subject or the child of such a subject, or abolish a High Court.

Through the curious and somewhat inadvertent grant of the power to alter any Act of Parliament prior to 1861 the Indian Legislative Council has some odd powers; it could repeal the provisions requiring obedience to the orders of the Secretary of State, the limitations on the power of the Governor-General in Council or local Governments to make war or treaties, the provisions regarding the jurisdiction, powers and authorities of the High Courts etc."

Stages of legislation in the Governor-General's Legislative Council :—The following are the stages which must ordinarily be passed through before a contentious measure becomes law :—

(1) Motion, after due notice, for leave to introduce a bill, followed by its formal introduction and publication for criticism. This corresponds with the practice in Parliament up to the First reading of a bill.

(2) Reference of the bill, with any opinions received, to a Select Committee. This corresponds with the Second reading of a bill in Parliament and the motion that it be committed; and it marks the most important stage, when the principle of the measure ought to be discussed and approved or disapproved. In a Select Committee the details are scrutinised, suggestions are considered, and the draft is amended.

(3) Consideration in Council of the Select Committee's report, and of any further amendment that may be brought forward. This corresponds with the Third reading of a bill in Parliament.

(4) Motion, as in Parliament, that the bill, as amended, be passed.

(5) Signature of the president to the bill as passed, and of the Governor-General by way of assent, followed by its final publication as an Act.

"In the case of a non-contentious project some of these steps may be omitted. There is often no need for waiting for criticism of such a measure or referring it to a Select Committee, and it may be accepted without amendment. Again, it is sometimes necessary to pass a bill without delay, and the rules have on occasion been suspended so completely as to allow an Act to pass through the Council at a single sitting. The standing orders render it impossible for the proceedings even to assume the character of a Parliamentary debate, and the machinery provided is such as to make legislation in the direction desired by the Government comparatively easy. It is rare for a bill to become law without being taken up as a Government measure, bills introduced by non-official members being, as is now increasingly the case at Westminster, intended mainly to stimulate the Government to action"*

The Quorum.—At meetings of the Governor-General's Legislative Council, in addition to the Governor-General, President, Vice-President, or other member appointed to preside, there must be present 15 or more members of the council, of whom eight at least must be additional members.

Veto on Indian Legislation by the Crown and its representatives.—All legislative measures passed by the legislatures in India are subject to the power of veto on the part of the Crown and of the authorities representing the Crown in India, as in the case of all Colonial Legislatures. Every Act passed by a Provincial Legislature has to receive the assent of the Governor first and the Governor-General next, whereupon it becomes law. It is, however, subject to subsequent disallowance by the Crown, on communication of which to India it ceases to be law. Every law passed by the Legislative Council of the Governor-General has to receive the assent of the Governor-General and is also subject to similar disallowance by the Crown. According to Sir C. P. Ilbert assent has usually been withheld on one or more of the following grounds :—(1) that the principle or policy of the Act or of some particular provision of the Act is unsound, (2) that

* (*Imperial Gazetteer* 134-35).

the Act or some provision of the Act is *ultra vires* of the Provincial legislature and (3) that the Act is defective in form.

(2) Deliberative Functions.—Between 1861 and 1892 the powers of the legislative councils were confined strictly to legislation. The Act of 1892 introduced non-legislative functions by empowering the head of the government in every case to make rules authorizing the discussion of the annual financial statement, provided that no member might propose a motion or divide the council. Under this power one or two days were allotted annually in every council to the discussion of a budget already settled by the executive government.

The Act of 1909 repealed the provisions of the Act of 1892 on this point and required rules to be made authorising at a meeting of the legislative councils the discussion of the annual financial statement and of any matter of general public interest.

The rules made under this direction introduced two important changes—

(i) This discussion of the budget is to extend over several days, it takes place before the budget is finally settled, and members have the right to propose resolutions and to divide the council upon them ;

(ii) At meetings of the legislative councils matters of general public importance may be discussed, and divisions may be taken on resolutions proposed by members.

In each case the resolutions are to take the form of recommendations to the Government, but the Government is not bound to act upon them.

Financial Statement or Budget.—The Regulations distinguish between the financial statement and the budget. The first means the preliminary financial estimates of the Governor-General in Council for the financial year next following. The second means the financial statement as finally settled by the Governor-General in Council. On a day appointed in each year by the Governor-General, the financial statement, with an explanatory memorandum, is presented to the council by the Finance Member, and a printed copy is supplied to each member. Its further consideration is postponed for some days in order that

members may have an opportunity of making themselves acquainted with its contents. Then on an appointed day there is *first* of all a general discussion of the financial statement. Members are at liberty to offer any observations on the statement as a whole or on any question of principle involved therein.

After this general discussion has terminated the *second stage* of discussion takes place on a subsequent day after the finance member has made any explanations he thinks necessary. On this day any member may move any resolution entered in his name in the list of business relating to any alteration in taxation, new loan or additional grant to local governments proposed or mentioned in the financial statement or in the explanatory memorandum, and a discussion takes place on the resolution so moved.

The *third stage* of discussion begins after these resolutions have been disposed of. The member of council in charge of a department explains the head or heads of the financial statement relating to his department, and resolutions may then be moved and discussed.

The range of discussion is subject to important restrictions. Certain heads of the financial statement are excluded from discussion. Among the excluded heads are military, political and purely provincial affairs; the following items under the heading "revenue" are excluded from discussion—stamps, customs, assessed taxes, and courts; and the following items under the heading "expenditure" are also excluded from discussion—assignments and compensation, interest on debt, ecclesiastical expenditure, and state railways. Besides these the Regulations themselves exclude from discussion any of the following subjects—

- (a) Any subject excluded from the discussion of the Governor-General's Legislative Council by section 22 of the Indian Councils Act, 1861.
- (b) Any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or any Native State in India ;
- (c) Any matter under adjudication by a Court of law having jurisdiction in any part of His Majesty's dominions.

Any resolution moved must comply with the following conditions :—

- (a) It must be in the form of a specific recommendation addressed to the Governor-General in Council ;
- (b) it must be clearly and precisely expressed and must raise a definite issue ;
- (c) it must not contain argument, inference, ironical expressions or defamatory statement, nor refer to the conduct or character of persons except in their official or public capacity ;
- (d) it must not challenge the accuracy of the financial statement ;
- (e) it must be directly relevant to some entry in the financial statement.

Two clear days' notice of any resolution must be given. The president may disallow any resolution or part of a resolution without giving any reason other than that in his opinion it cannot be moved, or that it should be moved in a provincial Council, and his decision cannot be challenged.

The Budget as finally settled must be presented to the Council on or before March, 24 by the Finance Member, who then describes any changes made in the figures of the Financial Statement, and explains why any resolutions passed by the Council have not been accepted.

The Budget as a whole is not submitted to the vote of the Council which has no statutory power of voting or vetoing the Budget. The power of passing the Indian Budget is vested not in the Legislative Council, but in the executive, and it is the latter, and not the former that decides any question arising on the Budget. Party Government and ministerial responsibility being non-existent in India, the ultimate right of the Executive to determine the Budget is considered necessary to prevent a deadlock in the work of Government. The executive in India is permanent and cannot be altered. It cannot therefore, afford to render its hold over the purse weakened by an adverse vote of the representative body : it must continue in office and carry on the work of Government. This is the constitutional ground on which the Government of India refuse to permit the Legislature to vote or veto the Budget.

Some distinctive features of the procedure in debate may be noticed here. No speech may exceed 15 minutes,

except those of the mover and the member in charge, who may speak for 30 minutes. Any member may send his speech in print to the secretary not less than 2 clear days before the day fixed for discussion of a resolution, with as many copies as there are members, and one copy is to be supplied to every member. Any such speech may at the discretion of the president be taken as read.

Discussion of matters of general public interest:— Discussions on these matters must be raised by resolution and must take place after all the other business of the day has been concluded. The general rules regulating the form of the resolutions, and the discussions upon them are, in the main, the same as those for the discussion of resolutions on the Financial Statement, the chief difference being that the range of discussion is wider and that amendments are allowed. The only subjects specifically excluded from discussion are those belonging to the three classes mentioned above in connexion with the Financial Statement, viz., matters for which the Councils cannot legislate, matters relating to foreign and native states, and matters under adjudication by a Court of law. But the president has the same discretionary power of disallowing resolutions as he has in the case of resolutions on the Financial Statement.

The right to move amendments on resolutions is made subject to restrictions which are intended to provide safeguards against abuse of that right. Fifteen days' notice of a resolution is required, and priority depends on the time of receipt. When a question has been discussed, or a resolution has been disallowed or withdrawn, no resolution or amendment raising substantially the same question may be moved within one year.

(3) Interrogatory Functions:— Since 1892 members of the Legislative Councils have had the right to ask questions under conditions and restrictions prescribed by regulations. This right is now enlarged by allowing a member to put a supplementary question "for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question." But the president may disallow a supplementary question, and the member to whom it is addressed may decline to answer it without notice. The asking of questions is liable to abuse, but as is pointed out by Sir C. P. Ilbert,* "there

* *Parliament*, 113-114.

is no more valuable safeguard against mal-administration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings, and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the House, and how that answer will be received".

The Local Legislatures.—For purposes of Legislation, the Council of a Governor, or of a Lieutenant-Governor having an executive Council, consists of the members of his Executive Council with the addition of members nominated or elected in accordance with rules made under the Act, together with the Advocate General (in the case of Madras, Bombay and Bengal*). The Legislative Council of a Lieutenant-Governor not having an executive Council, or of a Chief Commissioner consists only of nominated and elected members. There is a marked distinction between the constitution of the Legislative Councils of Bengal, Madras and Bombay and that of the Legislative Councils of Lieutenant-Governors and Chief-Commissioners. In the former case at least *one-half* of the additional members nominated or elected must be non-official ; in the latter case the proportion is only *one third*.

The regulations and rules as to elections and nomination have been framed in each province with reference to local conditions, with the object of obtaining, as far as possible, a fair representation of the different classes and interests in the province. Seats are provided in most cases for elected representatives of the land-holders, the Municipalities and District Boards, the Mahomedan Community, the Chamber of Commerce, and the University. The few remaining seats are allotted with a view to special local interests. Thus representatives are elected by the Corporations of Calcutta, Madras and Bombay, by the planting community in Madras, by the Indian commercial community and by the mill-owners in Bombay, and by the tea interest in Assam. The procedure as to elections is very varied and in many cases very complicated. Some of the main points only can be noticed.

* It should be noted here that according to Sec. 73 (cl. 2) of the Government of India Act, 1915 and 1916, the appointment of the Advocate-General as member of the Bengal Legislative Council is not obligatory : it is left to the discretion of the Governor.

Some general provisions are common to all the provinces. Females, minors, and persons of unsound mind may not vote, neither are they eligible for election. Persons coming under certain heads (including Government officers) are also declared ineligible for election. Members must, before taking their seats, make an oath or affirmation of allegiance to the Crown. The term of office is ordinarily three years. Corrupt practices render an election invalid.

Subject to these general provisions, the positive qualifications for electors and candidates and the methods of election, are laid down in the detailed rules for the various electorates. They vary considerably from province to province even in the case of similar electorates. Some seats proposed to be filled by election as soon as workable electorates can be found are at present filled by nomination.

The retention of a number of non-official seats filled by nomination in each council makes it possible to provide for the representation of minor interests and smaller classes as the particular needs of the moment and the claims of each community may from time to time require.

The powers of the local legislatures are described in section 79 of the Act which runs thus—

(1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, with the previous sanction of the Governor-General, but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

(a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India ; or

(b) regulating any of the current coin, or the issue of any bills, notes or other paper currency ; or

- (c) regulating the conveyance of letters by the post office or messages by the electric telegraph ; or
 - (d) altering in any way the Indian Penal Code ; or
 - (e) affecting the religion or religious rites and usages of any class of British subjects in India ; or
 - (f) affecting the discipline or maintenance of any part of His Majesty's naval or military forces ; or
 - (g) regulating patents or copyright ; or
 - (h) affecting the relations of the Government with foreign princes or states.
- (4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

It will be evident from the above that the powers of the local legislatures are strictly territorial, but beyond this no precise line of demarcation is drawn between their legislative spheres and that of the Governor-General's Council. Generally speaking, the Governor General's Legislative Council legislates only in cases where uniformity throughout British India is desirable (*e.g.* in cases of the Indian Penal Code, the Code of Civil Procedure etc.) or where new and important questions of principle are involved (*e.g.* in cases of the Bengal Tenancy Act, the Punjab Land Alienation Act, Patna University Act, etc.) or in matters beyond the competency of the local legislatures or for provinces which have no local legislatures of their own. The rules as to the discussion of the year's finance and of matters of general public interest and the rules for the asking of questions differ little in essentials from those of the Indian Legislative Council. One distinguishing feature however is that in the case of the local financial statements the first stage is an examination by a committee of the Council consisting of not more than 12 members, six nominated by the head of the Government and six elected by the non-official members.

Some Noticeable Features of the Indian Legislatures.—(1) *The non-sovereign characteristics of the Indian*

Legislatures—The Indian Legislatures are, according to constitutional theory, strictly non-sovereign law-making bodies. The general characteristics of such bodies are, according to Professor Dicey,—first, the existence of laws affecting their constitution which such bodies must obey and cannot change; hence, secondly, the formation of a marked distinction between ordinary laws and fundamental laws; and lastly, the existence of a person or persons, judicial or otherwise, having authority to pronounce upon the validity or constitutionality of laws passed by such law-making bodies. Each of these three characteristics is noticeable with reference to the Indian Legislatures, Imperial and Provincial. Although the Council of the Governor-General can pass laws as important as any Act passed by the British Parliament, the authority of the Council as regards law-making is completely subordinate to, and dependent upon, the Acts of Parliament which constituted the Legislatures. The legislative powers of the Indian Councils arise from definite Parliamentary enactments (such as the statutes of 1853, 1861, 1892 and 1909) which have all now been consolidated into one statute *vis.* the Government of India Acts, 1915 and 1916. This new Act might be termed the Constituent and Fundamental Law of the Government of India. In the next place, the Indian legislatures are also non-sovereign in that they are bound by a large number of Regulations and Rules (*e.g.* the Council Regulations) which the Executive Government of India is empowered to frame under the constituent law mentioned above, which cannot be changed by the Indian legislative bodies themselves, but which can be changed only by the Executive Government or by the superior power of the Imperial Parliament. Again the powers of the Councils as to law-making are also specifically restricted by rules as well as by statutes. Thus the Governor-General in Legislative Council “has not power to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or affecting the sovereignty or dominion of the Crown over any part of British India.”

Lastly, the Courts in British India are constitutionally vested with the power of pronouncing upon the validity or constitutionality of laws passed by the Indian Councils. The Courts treat Acts passed by the Indian Legislative Council precisely in the same way in which the King's Bench Division treats the bye-laws of a railway company. No Judge in India

or elsewhere ever issues a decree which declares invalid, annuls, or makes void a law or regulation made by the Governor-General in Council. But when any particular case comes before the Courts, whether civil or criminal, in which the rights or liabilities of any party are affected by the legislation of the Indian Council, the Court may have to consider and determine with a view to the particular case whether such legislation was or was not within the legal powers of the council, which is of course the same thing as adjudicating as regards the particular case in hand upon the validity or constitutionality of the legislation in question.

Thus in the case *Queen vs. Burah* referred to above "the High Court held a particular legislative enactment of the Governor-General in Council to be in excess of the authority given to him by the Imperial Parliament and therefore invalid, and on this ground entertained an appeal from two prisoners which, if the enactment had been valid, the Court would admittedly have been incompetent to entertain. The Privy Council, it is true, held on appeal that the particular enactment was within the legal powers of the Council and therefore valid, but the duty of the High Court of Calcutta to consider whether the legislation of the Governor-General was or was not constitutional, was not questioned by the Privy Council. To look at the same thing from another point of view, the Courts in India treat the legislation of the Governor-General in Council in a way utterly different from that in which any English Court can treat the Acts of the Imperial Parliament. An Indian tribunal may be called upon to say that an Act passed by the Governor-General need not be obeyed because it is unconstitutional or void. No British Court can give judgment, or ever does give judgment, that an Act of Parliament need not be obeyed because it is unconstitutional. Here, in short, we have the essential difference between subordinate and sovereign legislative power". (*Anson*)

(2) *Official and Non-official elements in the Indian Legislatures :*

- (a) All the Indian Legislatures consists of two elements, the official and the non-official : they are appointed both by nomination and election ; while the Government, Imperial or Provincial, is on its part empowered to nominate additional members to the Councils from officials and non-officials alike, the constituencies or electorates are on their part empowered to elect only non-officials as members. Under the amended Regu-

lations of 1912, officials as such have been made ineligible for election by any of the constituencies, though they are entitled to vote in them if qualified.

- (b) In all the Legislative Councils the proportion of the official and non-official elements varies. In the Governor-General's Legislative Council a permanent official majority is maintained in order "to enable the Government of India to discharge the constitutional obligations which it owes to His Majesty's Government and to the Imperial Parliament" (*Para 22 : Lord Morley's Reform Despatch*). The principle of a standing official majority is, however, dispensed with in the case of all Provincial Legislatures.
- (c) In this connexion we should refer to what may be called a convention or custom of the Indian Constitution, *viz.*, that official members are bound to vote with the Government on all Government measures. There is no statutory warrant for this rule or any warrant under the regulations framed under the Councils Acts. The position taken by the Executive Government appears to be this :—In respect of all measures of legislation introduced by the Executive Government the Governor-General and the members of the Executive Council—either in accordance with the decision at which they may have previously arrived as embodied in the bill, or in pursuance of the instructions and directions of the Secretary of State—introduce a bill into the Council as a "Government measure". In the former case their vote is based upon their conviction, and in the latter case their vote is based upon the mandate of the Secretary of State which they are bound to have carried out through the Legislative Council. In either case the Members of the Executive Council find themselves bound to vote in favour of the measure they have introduced, and against any alterations or amendments thereto, if they are not in conformity with the plans of the Government. And it is worthy of note that on this subject there is a distinct ruling of the Duke of Argyll who, in his Despatch dated

the 24th November 1870 laid it down that the Government of India "were merely executive officers of the Home Government who hold the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the official members to vote for it."

Very recently there was a deviation from the above custom of the constitution on the occasion of the consideration of the Indian Income Tax Bill. A vital clause in that Bill was taken exception to by the representatives of the land-holding class ; when its deletion was moved in the Council, the Hon'ble Sir William Meyer, who was in charge of this Government Bill, said—"In view of the opposition which has been excited among representatives of the land-owning classes, the Government have determined to leave this matter to the free decision of the Council. There will be no cracking of the Government whip, and though officials can speak and vote, they will do so with full liberty of conscience. They can approve or disapprove of the proposal according to their own judgment". (*Gazette of India, March 30, 1918, p. 521*). The result of this remarkable constitutional innovation was that many officials voted with the non-officials and the mixed majority was in favour of the deletion of the clause.

(3) *The Uni-cameral System :—*

In India all the legislatures are of one House : ever since Lord Lytton's time the question of having a Second Chamber consisting either of Ruling Princes or of British Indian Notables has been before the public. It was thoroughly discussed and negatived in the Reform Despatches of 1908. (See "*Documents*", Vol. I).

Leading stages in the evolution of the Indian Judiciary.—

1. The Royal Charter of Charles, II of the year 1661 gave to the Governor and Council power "to judge all persons belonging to the said Governor and Company or that shall be under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgment accordingly".

2. The above provisions of the Charter of 1661 were not, however, carried into effect before 1678. At Madras which was then the chief of the Company's settlements in India, two or more officers of the Company used before 1678 to sit as justices to dispose of petty cases but there was

no machinery for dealing with serious crimes. In 1678 the agent and Council at Madras resolved that, under the Charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil, according to the English laws, and to execute judgment accordingly and it was determined that the Governor and Council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this Court was not to supersede the formerly existing justices who were still to hear and decide petty cases.

3. By a charter of 1683 the king established a Court of Admiralty to be held at such place or places as the Company might direct and to consist of "one person learned in civil law and two assistants" to be appointed by the Company. The first such Court was held at Surat.

4. The Charter of 1687 proceeding from the Company, not from the Crown—which established a municipality—also created a Mayor's Court (consisting of the Mayor and 12 aldermen) which was to be a Court of Record with power to try civil and criminal causes in which an appeal was to lie to "our supreme Court of judicature commonly called our Court of Admiralty".

5. In 1726 a charter was granted establishing or reconstituting municipalities at Madras, Bombay and Calcutta, and setting up or remodelling Mayor's and other Courts at each of these places. At each place the Mayor and Aldermen were to constitute a Mayor's Court with civil jurisdiction, subject to an appeal to the Governor or President in Council, and a further appeal in more important cases to the King in Council.

6. The constitution of these Courts was amended in 1753 when a Court of Request at each of the said places was established for petty cases. The charter of 1753 also expressly excepted from the jurisdiction of the Mayor's Court all suits and actions between Indians only, and directed that the suits and actions should be determined among themselves, unless both parties submitted them to the determination of the Mayor's Courts.

7. The Regulating Act of 1773 established the Supreme Court. This Supreme Court was intended to be an independent and effectual check upon the executive government. The latter was still composed of the Company's servants entirely, but the Supreme Court consisted of judges appointed by the

Crown and it was made a King's Court and not a Company's Court ; the Court held jurisdiction over "His Majesty's subjects" in the provinces of Bengal, Behar and Orissa ; it consisted of a Chief Justice and (at first) three judges (subsequently reduced by 37 Geo. Ch. 142 Sec. 1 to a Chief Justice and two Judges) ; and was constituted by a charter framed under the authority of the Regulating Act. The King in Council further retained the right to disallow or alter any rule or regulation framed by the Government of India ; and in civil cases an appeal lay to the Privy Council. The intention was to secure to the Crown the supremacy in the whole administration of justice, and to place an effective check upon the affairs of the East India Company.

The arrangement, however, was soon found to be impracticable. The Act established in India two independent and rival powers *viz.*, the Supreme Government, comprising the Governor-General and his Council, and the Supreme Court ; the boundaries between them were altogether undefined, one deriving its authority from the Crown, and the other from the Company. The wording of the statute and charter in regard to the Supreme Court was extremely loose and unsatisfactory ; and the immediate result was a conflict of authority which raised for seven years, and which had the effect of paralysing the executive government and of undermining the whole administration.

The Court issued its writs extensively throughout the country, arrested and brought to Calcutta all persons against whom complaints were lodged,—zemindars, farmers and occupiers of land whatever their rank or consequence in the country. Revenue defaulters were set at liberty under a writ of *habeas corpus* ; the criminal administration under the Nawab was declared to be illegal ; the mofussil civil courts were held to have no valid jurisdiction ; and the Supreme Court, itself modelled upon the Courts of England, introduced the whole system of English law and procedure. The Court exercised large powers independently of the government, often so as to obstruct it, and had complete control over legislation : such a plan could not but fail and it had to be remodelled by another Act *viz.*, the Amending Act of 1780-81 which, among other things, exempted the Governor-General and Council of Bengal, jointly or severally, from the jurisdiction of the Supreme Court, for anything counselled, ordered or done by them in their public capacity (though this exemption did not apply to orders affecting British subjects). It also empowered

the Governor-General and Council to frame regulations for the Provincial Courts of Justice without reference to the Supreme Court. It was under this statute that the so-called "Regulations" were passed. The Court of Directors and the Secretary of State were to be regularly supplied with copies of these regulations which might be disallowed or amended by the King in Council, but were to remain in force unless disallowed within two years.

(8) An Act passed in 1800 founded a Supreme Court of Judicature at Madras on the Bengal pattern with judges appointed by the Crown. Bombay obtained her Supreme Court in 1823.

(9) The Indian High Courts Act of 1861 empowered the Crown to establish, by Letters Patent, High Courts at Calcutta, Madras and Bombay, in which the Supreme Courts, as well as the *Sadr Dewani Adalat* and the *Sadr Nizamut Adalat* were all merged, the jurisdiction and powers of the abolished courts being transferred to the new High Courts. Each of the High Courts was to be composed of a Chief Justice and not more than 15 judges, of whom not less than one-third including the Chief Justice were to be barristers, and not less than one third were to be members of the Covenanted Civil Service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The High Courts were expressly given superintendence over, and power to frame rules of practice for all the Courts subject to their appellate jurisdiction. Power was given by the Act to establish another High Court with the same constitution and powers as the High Courts established.

(10) The Indian High Courts Act of 1911 (*a*) raised the maximum number of judges of a High Court of Judicature in India to twenty; (*b*) gave power to His Majesty to establish new High Courts within His Majesty's dominions in India, whether or not included within the limits of local Jurisdiction of another High Court, and to make consequential changes altering the jurisdiction of that other High Court; and, (*c*) empowered the Governor-General in Council to appoint temporary additional judges of any High Court for a term not exceeding two years. In exercise of the powers given by this Act a new High Court has already been established at Patna for the new Province of Bihar and Orissa and the number of Judges of the Calcutta High Court was for a time raised to the maximum.

The Indian Judiciary of to-day.—At the apex of our judicial system stands the Judicial Committee of the Privy Council (*vide p. vii, ante*) constituted in 1833 by an Act of Parliament. The Judicial Committee is the final Court of Appeal from the several Indian High Courts.

The High Courts in India are established by Letters Patent. They may be abolished (Sec. 65) by an Act of the Governor-General in Legislative Council with the previous approval of the Secretary of State in Council. A judge of a High Court must be—

- (a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing ; or
- (b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge ; or
- (c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a Small Cause Court, for a period of not less than five years ; or
- (d) a person having been a pleader of a high court for a period of not less than ten years.

The number of judges of a High Court, including the Chief Justice and additional judges (who may be appointed by the Governor-General to act for such period, not exceeding two years, as may be required) cannot exceed twenty. Of the total number of Judges in any High Court not less than one third, including the Chief justice but excluding additional judges, must be such barristers or advocates, and not less than one third must be members of the Indian Civil Service ; the remaining judges may be recruited from the classes (c) and (d) above.

Appointments to the High Courts of India rest with the Crown and judges hold office during His Majesty's pleasure "though according to constitutional rule, *de facto*, their tenure is as secure as in Canada, where they may be removed by the Governor-General on a Parliamentary address."

The jurisdiction and powers of the high courts are thus set forth in secs. 106 and 107 of the Government of India Acts, 1915 and 1916—

Sec. 106.—(1) The several high courts are courts of record and have such jurisdiction, original and appel-

late, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

- (1A) The letters patent establishing, or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.
- (2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

Sec. 107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns ;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

The High Courts at Calcutta, Madras and Bombay are expressly required, in the exercise of their original jurisdiction in cases of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, to follow the personal law of the two parties if they are both under the same law and if not, that of the defendant—a principle which is generally followed in all Indian High Courts.

His Majesty may, if he sees fit, establish, by letters patent, an additional high court in any territory in British India. A recent instance is to be found in the establishment of the high court at Patna. In case of the establishment of a new high court, the jurisdiction of existing high courts may be altered and, subject to disallowance by the Crown, the Governor-General in Council may alter the local limits of the jurisdiction of any high court and authorise it to exercise its jurisdiction in respect of Christian subjects of His Majesty resident in the Native States of India. (sec. 109.)

Under sec. 110 of the Act the Governor-General, each Lieutenant-Governor and Chief Commissioner, and each of the members of the Executive Council of the Governor-General or a Governor or Lieutenant-Governor is not—

- (a) subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by any of them in his public capacity only ; or
- (b) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction ; nor
- (c) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

The exemption under this section from liability to arrest and imprisonment extends also to the chief justices and other judges of the several high courts.

Sec. 111 of the Act lays down that, in any proceeding, civil or criminal, the order in writing of the Governor-General in Council shall be a full justification of the act, except so far as the order extends to any European British subject ; but nothing in this section exempts the Governor-General or any member of his Executive Council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

As acts done outside the United Kingdom are not normally justiciable there, express provision is made (in secs. 124 and 125 of the Act) for the trial, before His Majesty's High Court of Justice in England, of any officers guilty of oppressing any British subject, of wilful disobedience to the orders of the Secretary of State, of wilful breach of duty, of trading (otherwise than as a share-holder in any joint-stock company or trading corporation), or of receiving presents save as expressly permitted—all of which are made misdemeanours punishable by fine or imprisonment or both.

By the above provisions of special exemption and special punishments the position and prestige of the higher Executive and Judiciary are maintained, and at the same time the chances of the abuse of authority are reduced as much as possible.

Government of India Act, 1915.

[5 & 6 Geo. 5. Ch. 61.]

ARRANGEMENT OF SECTIONS.

PART I.

HOME GOVERNMENT.

The Crown.

SECTION.

1. Government of India by the Crown.

The Secretary of State.

2. The Secretary of State.

The Council of India.

3. The Council of India.
4. Seat in council disqualification for Parliament.
5. Duties of council.
6. Powers of council.
7. President and vice-president of council.
8. Meetings of council.
9. Procedure at meetings.
10. Committees of council.

Orders and Communications.

11. Submission of proposed orders and communications to council.
12. Exception as to cases of urgency.
13. Exception as to secret orders and despatches.
14. Address of despatches from India.
15. Communication to Parliament as to orders for commencing hostilities.
16. Correspondence by governor-general with Secretary of State.

Establishment of Secretary of State.

17. Establishment of Secretary of State.
18. Pensions and gratuities.

Indian Appointments.

19. Indian appointments.

CONTENTS.

PART II.

THE REVENUES OF INDIA.

SECTION.

- 20. Application of revenues.
- 21. Control of Secretary of State over expenditure of revenues.
- 22. Application of revenues to military operations beyond the frontier.
- 23. Accounts of Secretary of State with Bank.
- 24. Powers of attorney for sale or purchase of stock and receipt of dividends.
- 25. Provision as to securities.
- 26. Accounts to be annually laid before Parliament.
- 27. Audit of Indian accounts in United Kingdom.

PART III.

PROPERTY, CONTRACTS AND LIABILITIES.

- 28. Power of Secretary of State to sell, mortgage and buy property.
- 29. Contracts of Secretary of State.
- 30. Power to execute assurances, &c., in India.
- 31. Power to dispose of escheated property, &c.
- 32. Rights and liabilities of Secretary of State in Council.

PART IV.

THE GOVERNOR-GENERAL IN COUNCIL.

General-Powers and Duties of Governor-General in Council.

- 33. General powers and duties of Governor-General in Council.

The Governor-General.

- 34. The governor-general.

The Governor-General's Executive Council.

- 35. Constitution of Governor-General's executive council.
- 36. Ordinary members of council.
- 37. Extraordinary members of council.
- 38. Vice-president of council.
- 39. Meetings.
- 40. Business of Governor-General in Council.
- 41. Procedure in case of difference of opinion.
- 42. Provision for absence of governor-general from meetings of council.
- 43. Powers of governor-general in absence from council.

SECTION.

War and Treaties.

44. Restriction on power of Governor-General in Council to make war or treaty.

PART V.

LOCAL GOVERNMENTS.

General.

45. Relation of local Governments to Governor-General in Council.

Governorships.

46. Governments of Bengal, Madras and Bombay.
47. Members of executive councils.
48. Vice-president of Council.
49. Business of Governor in Council.
50. Procedure in case of difference of opinion.
51. Provision for absence of governor from meetings of council.
52. The province of Agra.

Lieutenant-Governorships and other Provinces.

53. Lieutenant governorships.
54. Lieutenant-governors.
55. Power to create executive councils for lieutenant-governors.
56. Vice-president of council.
57. Business of Lieutenant-Governor in Council.
58. Chief Commissioners.
59. Power to place territory under authority of Governor-General in Council.

Boundaries.

60. Power to declare and alter boundaries of provinces.
61. Saving as to laws.
62. Power to extend boundaries of presidency-towns.

PART VI.

INDIAN LEGISLATION.

The Governor-General in Legislative Council.

63. Constitution of the Indian Legislative Council.
64. Meetings.
65. Legislative powers.

SECTION.

- 66. Laws for the Royal Indian Marine Service.
- 67. Business at meetings.
- 68. Assent of governor-general to Acts.
- 69. Power of Crown to disallow Acts.
- 70. Rules for conduct of legislative business.

Regulations and Ordinances.

- 71. Power to make regulations.
- 72. Power to make ordinances in cases of emergency.

Local Legislatures.

- 73. Local legislatures.
- 74. Constitution of legislative councils in Bengal, Madras and Bombay.
- 75. Meetings of legislative councils of Bengal, Madras and Bombay.
- 76. Constitution of legislative councils of lieutenant-governors and chief commissioners.
- 77. Power to constitute new local legislatures.
- 78. Meetings of legislative councils of lieutenant-governors or chief commissioners.
- 79. Powers of local legislatures.
- 80. Business at meetings.
- 81. Assent to Acts of local legislatures.
- 82. Power of Crown to disallow Acts of local legislatures.
- 83. Rules for conduct of legislative business.

Validity of Indian Laws.

- 84. Removal of doubts as to validity of certain Indian laws.

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE,
APPOINTMENTS, &C.

- 85. Salaries and allowances of governor-general and certain other officials in India.
- 86. Leave of absence to members of executive councils.
- 87. Provisions as to absence from India or presidency.
- 88. Conditional appointments.
- 89. Power for governor-general to exercise powers before taking seat.
- 90. Temporary vacancy in office of governor-general.

SECTION.

- 91. Temporary vacancy in office of governor.
- 92. Temporary vacancy in office of member of an executive council.
- 93. Vacancies in legislative councils.
- 94. Leave.
- 95. Power to make rules as to Indian appointments.
- 96. No disabilities in respect of religion, colour, or place of birth.

PART VIII.

THE INDIAN CIVIL SERVICE.

- 97. Rules for admission to the Indian Civil Service.
- 98. Offices reserved to the Indian Civil Service.
- 99. Power to appoint certain persons to reserved offices.
- 100. Power to make provisional appointments in certain cases.

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

- 101. Constitution of high courts.
- 102. Tenure of office of judges of high courts.
- 103. Precedence of judges of high courts.
- 104. Salaries, etc., of judges of high courts.
- 105. Provision for vacancy in the office of chief justice or other judge.

Jurisdiction.

- 106. Jurisdiction of high courts.
- 107. Powers of high court with respect to subordinate courts.
- 108. Exercise of jurisdiction by single judges or division courts.
- 109. Power for Governor-General in Council to alter local limits of jurisdiction of high courts.
- 110. Exemption from jurisdiction of high court.
- 111. Written order by governor-general justification for act in any court in India.

Law to be administered.

- 112. Law to be administered in cases of inheritance and succession.

Additional High Courts.

- 113. Power to establish additional high courts.

Advocate-General.

- 114. Appointment and powers of advocate-general.

SECTION.

PART X.

ECCLESIASTICAL ESTABLISHMENT.

- 115. Jurisdiction of Indian bishops.
- 116. Power to admit to holy orders.
- 117. Consecration of person resident in India appointed to bishopric.
- 118. Salaries and allowances of bishops and archdeacons.
- 119. Payments to representatives of bishops.
- 120. Pensions to bishops.
- 121. Furlough rules.
- 122. Establishment of Chaplains of Church of Scotland.
- 123. Saving as to grants to Christians.

PART XI.

OFFENCES, PROCEDURE AND PENALTIES.

- 124. Certain acts to be misdemeanours : Oppression—Wilful disobedience—Breach of duty—Trading—Receiving presents.
- 125. Loans to princes or chiefs.
- 126. Carrying on dangerous correspondence.
- 127. Prosecution of offences in England.
- 128. Limitation for prosecutions in British India.
- 129. Penalties.

PART XII.

SUPPLEMENTAL.

Repeal of Acts.

- 130. Repeal.

Savings.

- 131. Saving as to certain rights and powers.
- 132. Treaties, contracts and liabilities of East India Company.
- 133. Orders of East India Company.

Definitions, Short Title and Commencement.

- 134. Definitions.
- 135. Short title and commencement.

FIRST SCHEDULE.—Maximum number of nominated or elected members of Legislative Councils.

SECOND SCHEDULE.—Official salaries, &c.

THIRD SCHEDULE.—Offices reserved to the Indian Civil Service.

FOURTH SCHEDULE.—Acts repealed.

FIFTH SCHEDULE.—Provisions of this Act which may be repealed or altered by the Governor-General in Legislative Council.

The marginal references in square brackets [] indicate the enactments on which the sections are based.

1770=10 Geo. 3, c. 47.	1860=23 & 24 Vict.
1772=13 Geo. 3, c. 63.	1861=24 & 25 Vict.
1780=21 Geo. 3, c. 70.	1863=26 & 27 Vict., c. 73.
1793=33 Geo. 3, c. 52.	1865=28 & 29 Vict.
1797=37 Geo. 3, c. 142.	1869=32 & 33 Vict.
1800=39 & 40 Geo. 3, c. 79.	1870=33 & 34 Vict.
1813=53 Geo. 3, c. 155.	1871=34 & 35 Vict.
1815=55 Geo. 3, c. 84.	1874=37 & 38 Vict.
1823=4 Geo. 4, c. 71.	1880=43 Vict., c. 3.
1825=6 Geo. 4, c. 85.	1881=44 & 45 Vict.
1826=7 Geo. 4, c. 56.	1884=47 & 48 Vict., c. 38.
1833=3 & 4 Will. 4, c. 85.	1892=55 & 56 Vict., c. 14.
1835=5 & 6 Will. 4, c. 52.	1893=56 & 57 Vict., c. 62.
1837=7 Will. 4 & 1 Vict., c. 47.	1903=3 Edw. 7, c. 11.
1842=5 & 6 Vict., c. 119.	1907=7 Edw. 7, c. 35.
1853=16 & 17 Vict., c. 95.	1909=9 Edw. 7, c. 4.
1854=17 & 18 Vict., c. 77.	1911=1 & 2 Geo. 5.
1858=21 & 22 Vict., c. 106.	1912=2 & 3 Geo. 5, c. 6.
1859=22 & 23 Vict., c. 41.	1914=4 & 5 Geo. 5, c. 17.



Government of India Act, 1915.

(5 & 6 Geo. 5, Ch. 61).

AN ACT TO CONSOLIDATE ENACTMENTS RELATING TO THE GOVERNMENT OF INDIA

(29TH JULY, 1915).

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.—Home Government.

The Crown.

1. The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King, Emperor of India, and all rights which, if the Government of India Act, 1858,¹ had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the government of India.

Government
of India by
the Crown.
[1858 ss. 1,
2] 21 & 22
Vict. c. 106.

The Secretary of State.

2. (1) Subject to the provisions of this Act, the Secretary of State has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company,

The Secretary
of State.
[1858, s. 3.]

21 & 22 Vict.
c. 106.

¹ Printed in the author's "*Indian Constitutional documents* Vol. I." The whole Act, except s. 4, has been repealed by the present Act.

either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

[1833. s. 25]

(2) In particular, the Secretary of State may, subject to the provisions of this Act, superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

[1858. s. 6]

(3) There shall be paid out of the revenues of India to the Secretary of State and to his under secretaries respectively the like yearly salaries as may for the time being be paid to any other Secretary of State and his under secretaries respectively.

The Council of India.

The Council
of India.

[1858, s. 7,
1907, s. 1.]

3. (1) The Council of India shall consist of such number of members, not less than ten and not more than fourteen, as the Secretary of State may determine.

[1869 c. 97]
s. 1.]

(2) The right of filling any vacancy in the council shall be vested in the Secretary of State.

[1858, s. 10 ;
1907. s. 2]

(3) Unless at the time of an appointment to fill a vacancy in the council nine of the then existing members of the council are persons who have served or resided in British India for at least ten years, and have not last left ¹[*] India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

[1869, c. 97
s. 2. 1907 ;
s. 4.]

(4) Every member of the council shall hold office, except as by this section provided, for a term of seven years.

[1869, c. 97
ss. 2, 3.]

(5) The Secretary of State may, for special reasons of public advantage, re-appoint for a further term of five years any member of the council whose term of office has expired. In any such case the reasons for the re-appointment shall be set forth in a minute signed by

¹ The word "British" was repealed by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the council shall not be capable of re-appointment.

(6) Any member of the council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the council. [1869, c. 97, s. 6.]

(7) Any member of the council may be removed by His Majesty from his office on an address of both Houses of Parliament. [1858, s. 11.]

(8) There shall be paid to each member of the Council out of the revenues of India the annual salary of one thousand pounds. [1858, s. 13; 1907, s. 3.]

4. No member of the Council of India shall be capable of sitting or voting in Parliament.

Seat in Council disqualification for Parliament. [1858, s. 12.]

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India; but every order or communication sent to India, and every order made in the United Kingdom in relation to the government of India under this Act, shall be signed by the Secretary of State.

Duties of council. [1858, s. 19.]

6. (1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the council at which not less than five members are present.

Powers of council. [1858, s. 22.]

(2) The council may act notwithstanding any vacancy in their number.

7. (1) The Secretary of State shall be the president of the Council of India, with power to vote.

President and vice-president of council. [1858, s. 21.]

(2) The Secretary of State in Council may appoint any member of the council to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the council the Secretary of State, or, in his absence, the vice-president, if present,

[1858, s. 22.]

or, in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, shall preside.

Meetings of
council.
[1858, s. 22.]

8. Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every week.

Procedure at
meetings.
[1858, s. 23.]

9. (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

(2) In case of an equality of votes at any meeting of the council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the council who has been present at the meeting, may require that his opinion, and any reasons for it that he has stated at the meeting, be also entered in like manner.

Committees
of council.
[1858, s. 20.]

10. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the council or committees thereof is to be transacted.

Orders and Communications.

Submission of
proposed
orders and
communica-
tions to
council.
[1858, s. 24.]

11. (1) Subject to the provisions of this Act, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless it has been submitted to a meeting of the Council of India, be deposited in the council room for the perusal of all members of the council during seven days before the sending or making thereof.

(2) Any member of the council may record, in a minute book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

(3) If a majority of the council so record their opinions against any act proposed to be done, the Secretary of State shall, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

[1855, s. 25.]

12. (1) Where it appears to the Secretary of State that the despatch of any communication or the making of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Act declared to be necessary, is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the council or deposited for the perusal of the members of the council.

Exception as to cases of urgency.
[1858, s. 26.]

(2) In any such case the Secretary of State shall, except as by this Act provided, record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the council.

13. ¹(1) [Where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and a majority of votes therefor at a meeting of the Council of India is not required by this Act, the Secretary of State may send the order or communication to the Governor-General in Council or to any Governor in Council or officer or servant in India without submitting it to a meeting of the council or depositing it for the perusal of the members of the council or sending or giving notice of the reasons for making it, if he considers that it is of a nature to require secrecy.]

Exception as to secret orders and despatches.
[1793, s. 19 ;
1833, s. 36 ;
1858, s. 27 ;
1912, s. 1 (1)].

(2) Where any despatch to the Secretary of State from the Governor-General in Council or a Governor in

[1793, s. 22 ;
1858, s. 28 ;
1912, s. 1 (1)].

¹ The whole of sub-section (1) of s. 13 in square brackets was substituted for the original sub-section by the First Schedule to the Government of India (amendment) Act, 1916 (6 & 7 Geo. 5. c. 37), printed *post*.

Council concerns the government of India or of any part thereof, ¹ [or any of the matters aforesaid] and is, in the opinion of the authority sending it, of a nature to require secrecy, it may be marked "Secret" by that authority; and a despatch so marked shall not be communicated to the members of the Council of India unless the Secretary of State so directs.

Address of
despatches
from India.
[1858, s. 19
1912, s. 1 (1).]

14. Every despatch to the United Kingdom from the Governor-General in Council or a Governor in Council shall be addressed to the Secretary of State.

Communica-
tion to Parlia-
ment as to
orders for
commencing
hostilities.
[1858, s. 54.]

15. When any order is sent to India, directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament.

Correspond-
ence by
governor-
general with
Secretary of
State.
[1772, s. 9.]

16. It is the duty of the Governor-General in Council to transmit to the Secretary of State constantly and diligently an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor-General in Council and relating to the Government, commerce, revenues or affairs of India.

Establishment of Secretary of State.

Establish-
ment of
Secretary of
State.
[1858, s. 15.]

17. (1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of the persons on that establishment, except by an Order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

[1858, s. 16.]

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness in

² The words in square brackets were substituted for the words "or the levying of war or the making of peace, or negotiations or treaties with any prince or state" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

relation to appointments to junior situations in the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

18. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer or servant appointed on the establishment of the Secretary of State in Council such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representatives of such persons, under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service or to personal representatives of such persons.

Pensions and gratuities.
[1858, s. 18 ;
1911, c. 25,
s. 1.]

Indian Appointments.

19. Except as otherwise provided by this Act, all powers of making rules in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such rules, which, if the Government of India Act, 1858, had not been passed, might have been exercised by the Court of Directors of the East India Company or the Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council :

Indian appointments.
[1858, s. 37.]

[1 & 22 Vict.,
c. 106.]

Provided that in the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown or of the East India Company.

[1858, s. 35 ;
1860, c. 100,
s. 1.]

PART II. — The Revenues of India.

20. (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.

Application of revenues
[1853, s. 27
1858, ss. 2,
39, 42.]

[1858, s. 42] (2) There shall be charged on the revenues of India alone—

- [21 & 22 Vict., c. 106.]
- (a) all the debts of the East India Company ; and
 - (b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858¹, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act ; and
 - (c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India ; and
 - (d) all payments under this Act.

[1858, ss. 1. 2.]

[1858, s. 2.]

(3) The expression “ the revenues of India ” in this Act shall include all the territorial and other revenues of or arising in British India, and, in particular,—

[21 & 22 Vict., c. 106.]

[1853, s. 27.]

- (i) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858¹, had not been passed ; and
- (ii) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property in British India ; and
- (iii) all movable or immovable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as *bona vacantia* for want of a rightful owner.

[1858, ss. 39 42.]

[21 & 22 Vict., c. 106.]

(4) All property vested in, or arising or accruing from property or rights vested, in His Majesty under the Government of India Act, 1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India.

[Control of Secretary of State over expenditure of revenues.]

21. The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council ; and no grant or appropriation of any part of those revenues, or

of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858 or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India :

[1858, ss. 1, 41]
21 & 22 Vict., c. 106.

¹ [Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the council shall be deemed to be made with the concurrence of a majority of such votes.]

22. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.

Application of revenues to military operations beyond the frontier.
[1858, s. 55.]

23. (1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in His Majesty for the purposes of the government of India, or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act.

Accounts of Secretary of State with Bank.
[1858, s. 43.]

(2) All such revenues and money shall, except as by this section is provided, be paid into the Bank of England to the credit of an account entitled "The Account of the Secretary of State in Council of India."

(3) The money placed to the credit of that account shall be paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary, or signed by the accountant-general on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that accountant-general and countersigned in such manner as the Secretary of State in Council directs ; and any draft or order so signed and counter-

[1858, s. 43 ;
1859, s. 3 ;
1863, s. 16.]

¹ The Proviso in square brackets was inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

signed shall effectually discharge the Bank of England for all money paid thereon.

[1858, s. 43,
prov.; 1860, c.
102, s. 7.]

(4) The Secretary of State in Council may, for the payment of current demands, keep at the Bank of England such accounts as he deems expedient; and every such account shall be kept in such name and be drawn upon by such person, and in such manner, as the Secretary of State in Council directs.

[1858, s. 45.]

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "The Stock Account of the Secretary of State in Council of India."

[1858, ss. 43,
45; 1860, c.
102, s. 7.]

(6) Every account referred to in this section shall be a public account.

Powers of
attorney for
sale or pur-
chase of stock
and receipt
of dividends.
[1858, s. 47;
1863, s. 16.]

24. The Secretary of State in Council by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under-secretary, may authorise all or any of the cashiers of the Bank of England—

- (a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and
- (b) to purchase and accept stock for any such account; and
- (c) to receive dividends on any stock standing to any such account;

and, by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any such sale or dividend:

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

25. All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorised by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary, and directed to the chief cashier and chief accountant of the Bank of England.

Provisions as to securities.
[1858, s. 48;
1863, s. 16.]

26. (1) The Secretary of State in Council shall, within the first [twenty-eight days]¹ during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

Accounts to be annually laid before Parliament.
[1858, s. 53.]

(a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the government of India, distinguishing the same under the respective heads thereof;

(b) the latest estimate of the same for the financial year last completed;

(c) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;

[1858, s. 53;
1874, c. 3,
s. 15.]

(d)² [* * * *]

(e) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

¹ The words "twenty-eight days" in square brackets were substituted for the words "fourteen days" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

² Paragraph (d) was repealed by the Second Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

Audit of
Indian
accounts in
United
Kingdom.
[1858, s. 52.]

27. (1) His Majesty may, by warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorise that auditor to appoint and remove such assistants as may be specified in the warrant.

(2) The auditor shall examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of this Act.

(3) The Secretary of State in Council shall, by the officers and servants of his establishment, produce and lay before the auditor all such accounts, accompanied by proper vouchers for their support, and submit to his inspection all books, papers and writings having relation thereto.

(4) The Auditor may examine all such officers and servants of that establishment, being in the United Kingdom, as he thinks fit, in relation to such accounts and the receipt, expenditure or disposal of such money, stores and property, and may for that purpose, by writing signed by him, summon before him any such officer or servant.

(5) The auditor shall report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto as he thinks fit, specially noting cases (if any) in which it appears to him that any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.

(6) The auditor shall specify in detail in his reports all sums of money, stores and property which ought to be accounted for, and are not brought into account or have

not been appropriated in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies or irregularities which may appear in the accounts, or in the authorities, vouchers or documents having relation thereto.

(7) The auditor shall lay all his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor shall hold office during good behaviour.

(9) There shall be paid to the auditor and his assistants, out of the revenues of India, such salaries as His Majesty, by warrant signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service Commissioners) shall, for the purposes of superannuation ¹[or retiring] allowance [and their legal personal representatives shall, for the purposes of gratuity,] be in the same position as if ²[the auditor and his assistants] were on the establishment of the Secretary of State in Council. [1881, c. 63, s. 1.]

PART III.—Property, Contracts, and Liabilities.

28. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the government of India, and raise money on any such real ¹[or personal] estate by way of mortgage ¹[or otherwise] and make the proper assurances for any of those purposes, and purchase and acquire any property. Power of Secretary of State to sell, mortgage and buy property. [1858, s. 40.]

(2) Any assurance relating to real estate, made by the authority of the Secretary of State in Council, may

¹ The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 57 printed *post*).

² The words "the auditor and his assistants" were substituted for the word "they" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

be made under the hands and seals of ¹ [two] members of the Council of India.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

Contracts of
Secretary of
State.
[1858, s. 40.]

29. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of this Act.

[1859, s. 5.]

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made which, if it were made between private persons, would be by law required to be under seal, may be made, varied or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied or discharged under the hands of two members of the Council of India.

[1903, ss. 1, 2.]

(5) Provided that any contract for or relating to the manufacture, sale, purchase or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may, subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon the permanent establishment of the Secretary of State in Council who is duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed shall be as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

[1903, ss. 1, 3.]

[1859, s. 5.]

(6) The benefit and liability of every contract made in pursuance of this section shall pass to the Secretary of State in Council for the time being.

¹ The word "two" in square brackets was substituted for the word 'three' by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

30. (1) The Governor-General in Council and any local government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such real [or personal] estate by way of mortgage ¹ [or otherwise], and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

Power to execute assurances, &c., in India. [1859, ss. 1, 2; 1912, s. 1 (1).]

(2) Every assurance and contract made for the purposes of this section shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

[1859, s. 2; 1870, c. 59, s. 2.]

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

[1859, s. 1.]

31. The Governor-General in Council, and any other person authorised by any Act passed in that behalf by the Governor-General in Legislative Council, may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devolution as *bona vacantia*, to or in favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person.

Power to dispose of escheated property, &c. [1853, s. 27.]

32. (1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.

Rights and liabilities of Secretary of State in Council. [1858, s. 65; 1859, s. 6.]

(2) Every person shall have the same remedies against the Secretary of State in Council as he might

[1858, s. 65.]

¹ The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

21 & 22 Vict.
c. 106.

have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed.

21 & 22 Vict.
c. 106.

(3) The property for the time being vested in His Majesty for the purposes of the government of India shall be liable to the same judgments and executions as it would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, and this Act had not been passed.

[1858, s. 68;
1859, s. 2.]

(4) Neither the Secretary of State nor any member of the Council of India shall be personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor shall any person executing any assurance or contract on behalf of the Secretary of State in Council be personally liable in respect thereof; but all such liabilities, and all costs and damages in respect thereof, shall be borne by the revenues of India.

PART IV.—The Governor-General in Council.

General Powers and Duties of Governor-General in Council.

General powers and duties of Governor-General in Council.

[1772, s. 9;
1793, s. 40;
1833, s. 39;
1893, s. 1
(2).]

The Governor-General.
[1858, s. 29.]

Constitution of governor-general's executive council.

33. The superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

The Governor-General.

34. The Governor-General of India is appointed by His Majesty by warrant under the Royal Sign Manual.

The Governor-General's Executive Council.

35. The governor-general's executive council consists of the ordinary members and the extraordinary members (if any) thereof.

36. (1) The ordinary members of the governor-general's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

Ordinary members of council.
[1861, c. 67, s. 3 ; 1869, c. 97, s. 8 ; 1874, c. 91, s. 1.]

(2) The number of the ordinary members of the council shall be five, or, if His Majesty thinks fit to appoint a sixth member, six.

[1861, c. 67, s. 3 ; 1874, c. 91, s. 1.]

(3) Three at least of them must be persons who at the time of their appointment have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.

[1861, c. 67, s. 3.]

(4) If any person appointed an ordinary member of the council is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

37. (1) The Secretary of State in Council may, if he thinks fit, appoint the commander-in-chief for the time being of His Majesty's forces in India to be an extraordinary member of the governor-general's executive council, and in that case the commander-in-chief shall, subject to the provisions of this Act, have rank and precedence in the council next after the governor-general.

Extraordinary members of council.
[1861, c. 67, s. 3 ; 1909, s. 4.]

(2) When and so long as the council assembles in any province having a governor, he shall be an extraordinary member of the council.

[1861, c. 67, s. 9 ; 1912, s. 1 (1).]

38. The governor-general shall appoint a member of his executive council to be vice-president thereof.

Vice-president of council.
[1909, s. 4.]

39. (1) The governor-general's executive council shall assemble at such places in India as the Governor-General in Council appoints.

Meetings.
[1861, c. 67, s. 9.]

(2) At any meeting of the council the governor-general or other person presiding and one ordinary member of the council may exercise all the functions of the Governor-General in Council.

1833, s. 48.]

Business of
Governor-
General in
Council.
[1793, s. 39 ;
1813, s. 79.]

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise, as the Governor-General in Council may direct.

[1861, c. 67,
s. 8.]

(2) The governor-general may make rules and orders for the more convenient transaction of business in his executive council, and every order made, or act done, in accordance with such rules and orders shall be treated as being the order or the act of the Governor-General in Council.

Procedure in
case of
difference of
opinion.
[1772, s. 8 ;
1833, s. 48.]

41. (1) If any difference of opinion arises on any question brought before a meeting of the governor-general's executive council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the governor-general or other person presiding shall have a second or casting vote.

[1870, c. 3. s.
5.]

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the governor-general, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor-general may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the council have recorded on the subject.

[1793, s. 49.]

(4) Nothing in this section shall empower the governor-general to do anything which he could not lawfully have done with the concurrence of his council.

Provision for
absence of

42. If the governor-general is obliged to absent himself from any meeting of the council, by indisposition

or any other cause, and signifies his intended absence to the council, the vice-president, or, if he is absent, the senior ordinary member present at the meeting, shall preside thereat, with the like powers as the governor-general would have had if present :

governor-general from meetings of council.

[1861, c. 67, s. 7 ; 1909, s. 4.]

Provided that if the governor-general is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature ; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the governor-general, when present, dissents from the majority at a meeting of the council.

43. (1) Whenever the Governor-General in Council declares that it is expedient that the governor-general should visit any part of India unaccompanied by his executive council, the Governor-General in Council may, by order, authorize the governor-general alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the council.

Powers of governor-general in absence from council.

(2) The governor-general during absence from his executive council may, if he thinks it necessary, issue, on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council, to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government without previously communicating the order to the local Government ; and any such order shall have the same force as if made by the Governor-General in Council ; but a copy of the order shall be sent forthwith to the Secretary of State and to the local Government, with the reasons for making the order.

[1793, s. 54 ; 1912, s. 1 (1).]

(3) The Secretary of State in Council may, by order, suspend until further order all or any of the powers of the governor-general under the last foregoing sub-section ; and those powers shall accordingly be suspended as from the time of the receipt by the governor-general of the order of the Secretary of State in Council.

[1793, s. 55.]

War and Treaties.

44. (1) The Governor-General in Council may not, without the express order of the Secretary of State

Restriction on power of

Governor-General in Council to make war or treaty.
[1793, s. 42.]

in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or state dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possessions of any such prince or state.

(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other prince or state than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any prince or state except on the consideration of that prince or state actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with the reasons therefor, to the Secretary of State.

PART V.—Local Governments.

General.

Relation of local Governments to Governor-General in Council.

[1772, s. 9 ;
1793, ss. 24,
40, 41, 43,
44 ; 1833, ss.
65, 68 ; 1893,
s. 1 (2) ;
1912, s. 1 (1).]

45. (1) Every local Government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

[1772, s. 9 ;
1793, s. 43 ;
1912, s. 1 (1).]

(2) No local Government may make or issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian prince or state (except in cases of sudden emergency or imminent danger when it

appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor-General in Council or from the Secretary of State ; and every such treaty shall, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor-General in Council. If any governor, lieutenant-governor or chief commissioner, or any member of a governor's or lieutenant-governor's executive council, wilfully disobeys any order received from the Governor-General in Council under this subsection, he may be suspended or removed and sent to England by the Governor-General in Council, and shall be subject to such further pains and penalties as are provided by law in that behalf.

(3) The authority of the local Government is not superseded by the presence in its province of the governor-general. [1833, s. 67 ; 1912, s. 1 (1).]

Governorships.

46. (1) The presidencies of Fort William in Bengal, Fort St. George and Bombay are, subject to the provisions of this Act, governed by the Governors in Council of those presidencies respectively, and the two former presidencies are in this Act referred to as the presidencies of Bengal and of Madras. Governments of Bengal, Madras and Bombay. [1772, s. 7 ; 1793, s. 24 ; 1833, s. 56 ; 1912, s. 1 (1).]

(2) The governors of Bengal, Madras and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual. [1858, s. 29 ; 1912, s. 1 (1).]

(3) The Secretary of State may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of those presidencies ; and whilst any such order is in force the governor of the presidency to which the order refers shall have all the powers of the Governor thereof in Council. [1833, ss. 57, 59 ; 1912, s. 1 (1).]

47. (1) The members of a governor's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs. Members of executive councils. [1793, s. 24 ; 1833, ss. 56, 57 ; 1869, c. 97, s. 8 ; 1909, s. 2 (1) ; 1912, s. 1 (1).]

(2) Two at least of them must be persons who at the time of their appointment have been for at least twelve years in the service of the Crown in India. [1793, s. 25 ; 1909, s. 2 (1) ; 1912, s. 1 (1).]

[1793, s. 33 ;
1912, s. 1 (1).]

(3) Provided that, if the commander-in-chief of His Majesty's forces in India (not being likewise governor-general) happens to be resident at Calcutta, Madras or Bombay, he shall, during his continuance there, be a member of the governor's council.

Vice-president
of council.

[1909, s. 4 ;
1912, s. 1 (1).]

48. Every governor of a presidency shall appoint a member of his executive council to be vice-president thereof.

Business of
Governor in
Council.

[1793, s. 39 ;
1813, s. 79 ;
1912, s. 1 (1).]

49. (1) All orders and other proceedings of the Governor in Council of any presidency shall be expressed to be made by the Governor in Council, and shall be signed by a secretary to the Government of the presidency, or otherwise, as the Governor in Council may direct.

[1861, c. 67,
s. 28 ; 1912,
s. 1 (1).]

(2) A governor may make rules and orders for the more convenient transaction of business in his executive council, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Governor in Council.

Procedure in
case of
difference of
opinion.

[1909, s. 2 (2) ;
1912, s. 1 (1)]

50. (1) If any difference of opinion arises on any question brought before a meeting of a governor's executive council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they are equally divided the governor or other person presiding shall have a second or casting vote.

[1793, ss. 47,
48 ; 1912,
s. 1 (1).]

(2) Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his presidency, or of any part thereof, are or may be, in the judgment of the governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case the governor and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the governor shall be signed by the governor and by those members.

(4) Nothing in this section shall empower a governor to do anything which he could not lawfully have done with the concurrence of his council. [1793, s. 49 ; 1912, s. 1 (1).]

51. If a governor is obliged to absent himself from any meeting of his executive council, by indisposition or any other cause, and signifies his intended absence to the council, the vice-president, or, if he is absent, the senior civil member present at the meeting, shall preside thereat, with the like powers as the governor would have had if present :

Provision for absence of governor from meetings of council.

[1800, s. 12 ; 1861, c. 67, s. 34 ; 1909, s. 4 ; 1912, s. 1 (1).]

[1800, s. 12 ; 1912, s. 1 (1).]

Provided that if the governor is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature ; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the governor, when present, dissents from the majority at a meeting of the council.

52. The Secretary of State in Council may, if he thinks fit, direct that the province of Agra be constituted a presidency under a Governor in Council, and, if that direction is given, the presidency shall be constituted on the terms and under the conditions mentioned in section nineteen of the Government of India Act, 1853, and section four of the Government of India Act, 1854.

The Province of Agra.

[1833, ss. 38, 56, 57 ; 1853, ss. 15, 19.]
16 & 17 Vict., c. 95.

Lieutenant-Governorships and other Provinces.

53. (1) Each of the following provinces, namely, those known as Bihar and Orissa, the United Provinces of Agra and Oudh, the Punjab, and Burma, is, subject to the provisions of this Act, governed by a lieutenant-governor, with or without an executive council.

Lieutenant-Governorships.

[1835, s. 2 ; 1853, ss. 15, 17 ; 1861, c. 67 ; s. 46.]

(2) The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a lieutenant-governor.

[1861, c. 6, ss. 46, 49.]

54. (1) A lieutenant-governor is appointed by the governor-general with the approval of His Majesty.

Lieutenant-Governors.

(2) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India.

[1835, s. 2 ; 1853, ss. 15, 16, 17 ; 1858, s. 29.]

[1853, s. 17 ;
1854, s. 4 ;
1861, c. 67,
ss. 46, 49.]

Power to
create execu-
tive councils
for lieutenant-
governors.

[1909, s. 3
(1), (2) ;
1912, s. 2.]

(3) The Governor-General in Council may, with the sanction of His Majesty previously signified by the Secretary of State in Council, declare and limit the extent of the authority of any lieutenant-governor.

55. (1) The Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, create a council in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification—

(a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council ; and

(b) make provision for the appointment of temporary or acting members of the council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a lieutenant-governor and his council, and in the case of equality of votes, and in the case of a lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause :

Provided that, before any such notification is published a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, an address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon without prejudice to the making of any new draft.

[1909, s. 7.]

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

[1909, s. 3(4).]

(3) Every member of a lieutenant-governor's executive council shall be appointed by the governor-general, with the approval of His Majesty.

Vice-president
of council.
[1909, s. 4.]

56. A lieutenant-governor who has an executive council shall appoint a member of the council to be vice-president thereof, and that vice-president shall preside at meetings of the council in the absence of the lieutenant-governor.

57. A lieutenant-governor who has an executive council may, with the consent of the Governor-General in Council, make rules and orders for more convenient transaction of business in the council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Lieutenant-Governor in Council.

Business of
Lieutenant-
Governor in
Council.
[1909, s. 3 (3).]

58. Each of the following provinces, namely, those known as Assam, the Central Provinces, the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a chief commissioner.

Chief Com-
missioners.

59. The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner or by otherwise providing for its administration.

Power to place
territory under
authority of
Governor-
General in
Council.
[1854, s. 3.]

Boundaries.

60. The Governor-General in Council may, by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely :—

Power to
declare and
alter bounda-
ries of
provinces.
[1800, s. 1 ;
1833, s. 38 ;
1853, s. 17 ;
1861, c. 67,
ss. 47, 49 ;
1865, c. 17,
s. 4 ; 1912,
s. 4 (2).]

(1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council ; and

[1865, c. 17,
s. 5.]

(2) any notification under this section may be disallowed by the Secretary of State in Council.

61. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British

Saving as to
laws.
[1854, s. 3,
prov. ; 1861,

c. 67, s. 47,
prov. ; 1912,
s. 3.]

India, shall not affect the law for the time being in force in that part.

Power to
extend bound-
aries of
presidency-
towns.
[1815, s. 1 ;
1912, s. 1 (2).]

62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively ; and any Act of Parliament, letters patent, charter, law or usage conferring jurisdiction, power or authority within the limits of those towns respectively shall have effect within the limits as so extended.

PART VI.—Indian Legislation.

The Governor-General in Legislative Council.

Constitution
of the Indian
Legislative
Council.
[1861, c. 67,
s. 10 ; 1909,
s. 1 (1).]

63. (1) For purposes of legislation the Governor-General's Council shall consist of the members of his executive council with the addition of members nominated or elected in accordance with rules made under this Act. The council so constituted is in this Act referred to as the Indian Legislative Council.

[1909, s. 1
(2).]

(2) The number of additional members so nominated or elected, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall be such as may be prescribed by rules made under this Act :

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

[1861, c. 67,
s. 10 ; 1909,
s. 1 (1).]

(3) At least one-half of the additional members of the council must be persons not in the civil or military service of the Crown in India ; and, if any additional member accepts ¹ [any office of profit] under the Crown in India, his seat as an additional member shall thereupon become vacant.

¹ The words in square brackets were substituted for the word "office" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

(4) When and so long as the Indian Legislative Council assembles in a province having a Lieutenant-Governor or Chief Commissioner, he shall be an additional member of the council, in excess, if necessary, of the aggregate number of nominated or elected additional members prescribed by this section.

[1861, c. 67,
ss. 9, 10;
1870, c. 3,
s. 3; 1909,
s. 1 (1).]

(5) The additional members of the Council are not entitled to be present at meetings of the Governor-General's Executive Council.

[1861, c. 67,
s. 10; 1909,
s. 1 (1).]

(6) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected as additional members of the Indian Legislative Council, and as to the qualifications for being, and for being nominated or elected, an additional member of that Council, and as to any other matter for which rules are authorised to be made under this section, and also as to the manner in which those rules are to be carried into effect.

[1909, s. 6.]

¹[(6A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

(6B) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a Legislative Council.]

(7) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

[1909, ss. 6,
7.]

64. (1) The Indian Legislative Council shall assemble at such times and places as the Governor-General in Council appoints.

Meetings.
[1861, c. 67,
s. 17.]

(2) Any meeting of the council may be adjourned, under the authority of the Governor-General in Council, by the Governor-General or other person presiding.

¹ The new sub-sections (6A) and (6B) in square brackets were inserted by s. 1. of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5. c. 37), printed *post*.

[1861, c. 67,
s. 6.]

(3) In the absence of the governor-general from any meeting of the Council the person to preside thereat shall be the vice-president of the council, or, in his absence, the senior ordinary member of the council present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest ¹[or when questions are asked], the vice-president or the member appointed to preside in accordance with rules made under this Act.

[1861, c. 67,
s. 15.]

(4) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

Legislative
powers.
[1861, c. 67,
s. 22.]

65. (1) The Governor-General in Legislative Council has power to make laws—

[1861, c. 67,
s. 22; 1865,
c. 17, ss. 1, 2.]

(a) for all persons, for all courts, and for all places and things, within British India ; and

[1869, c. 98,
s. 1.]

(b) for all subjects of His Majesty and servants of the Crown within other parts of India ; and

[1813, s. 96 ;
1833, s. 73 ;
1861, c. 67,
s. 22, 5th
proviso; 1881,
c. 58, s. 180
(2) (a) (b).]
44 and 45
Vict., c. 58.
[1884, s. 2.]

(c) for all native Indian subjects of His Majesty, without and beyond as well as within British India ; and

(d) for the government of officers, soldiers and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act ; and

(e) for all persons employed or serving in or belonging to the Royal Indian Marine Service ; and

[1861, c. 67,
s. 22; 1892,
s. 3.]

(f) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Governor-General in Legislative Council has power to make laws.

[1861, c. 67,
s. 22, 1st
proviso.]

(2) Provided that the Governor-General in Legislative Council has not, unless expressly so authorised by

¹ The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5. c. 37), printed *post*.

Act of Parliament, power to make any law repealing or affecting—

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act and any Act amending the same); or

[1861, c. 67, s. 22, 1st, 5th and 6th provisos.]
44 and 45 Vict., c. 58.

(ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India;

[1861, c. 67, s. 22, 4th proviso.]

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

[1861, c. 67, s. 22, 7th proviso.]

(3) The Governor-General in Legislative Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any high court.

[1833, s. 46; 1861, c. 104, ss. 11, 16; 1884, s. 5; 1914, s. 3.]

66. (1) A law made under this Act for the Royal Indian Marine Service shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits.

Laws for the Royal Indian Marine Service.
[1884, ss. 2, prov. (a) 3.]

(2) The punishments imposed by any such law for offences shall be similar in character to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that, in the case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

[1884, s. 2, prov. (b).]

Business at
meetings.
[1861, c. 67,
s. 19.]

67. (1) At a meeting of the Indian Legislative Council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

[1861, c. 67,
s. 19, prov.]

(2) It shall not be lawful without the previous sanction of the Governor-General, to introduce at any meeting of the council any measure affecting—

- (a) the public debt or public revenues of India, or imposing any charge on the revenues of India; or
- (b) the religion or religious rites and usages of any class of British subjects in India; or
- (c) the discipline or maintenance of any part of His Majesty's military or naval forces; or
- (d) the relations of the Government with foreign princes or states.

[1909, ss. 5,
7.]

(3) Notwithstanding anything in the foregoing provisions of this section, the Governor-General in Council may, with the sanction of the Secretary of State in Council, make rules authorising at any meeting of the Indian Legislative Council the discussion of the annual financial statement of the Governor-General in Council and of any matter of general public interest and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section may provide for the appointment of a member of the Council to preside at any such discussion¹ [or when questions are asked] in the place of the Governor-General and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

¹ The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

68. (1) When an Act has been passed at a meeting of the Indian Legislative Council, the Governor-General, whether he was or was not present in council at the passing thereof, may declare that he assents to the Act, or that he withholds assent from the Act, or that he reserves the Act for the signification of His Majesty's pleasure thereon.

Assent of
governor-
general to
Acts.
[1861, c. 67,
s. 20.]

(2) An Act of the Governor-General in Legislative Council has not validity until the Governor-General has declared his assent thereto, or, in the case of an Act reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the Governor-General through the Secretary of State in Council, and that assent has been notified by the Governor-General.

69. (1) When an Act of the Governor-General in Legislative Council has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act.

Power of
Crown to
disallow Acts.
[1772, s. 37;
1861, c. 67, s.
21.]

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

70. The Governor-General in Legislative Council may, subject to the assent of the Governor-General, alter the rules for the conduct of legislative business in the Indian Legislative Council (including rules prescribing the mode of promulgation and authentication of Acts passed by that council); but any alteration so made may be disallowed by the Secretary of State in Council, and if so disallowed shall have no effect.

Rules for
conduct of
legislative
business.
[1861, c. 67,
s. 18.]

Regulations and Ordinances.

71. (1) The local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

Power to
make
regulations.
[1870, c. 3,
s. 1, para 1.]

[1870, c. 3, s. 1, para. 2.]

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and, when any such draft has been approved by the Governor-General in Council and assented to by the governor-general, it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Governor-General in Legislative Council.

[1870, c. 3, s. 2.]

(3) The Governor-General shall send to the Secretary of State in council an authentic copy of every regulation to which he has assented under this section.

¹ (3 A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.]

[1870, c. 3, s. 1, paras 1, 3.]

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

Power to make ordinances in cases of emergency.
[1861, c. 67, s. 23.]

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Governor-General in Legislative Council; but the power of making ordinances under this section is subject to the like restrictions as the power of the Governor-General in Legislative Council to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Governor-General in Legislative Council, and may be controlled or superseded by any such Act.

¹ The new sub-section (3A) in square brackets was inserted by s. 2 of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

Local Legislatures.

73. (1) For purposes of legislation, the council of a governor, or of a lieutenant-governor having an executive council, shall consist of the members of his executive council with the addition of members nominated or elected in accordance with rules made under this Act.

Local legislatures.
[1861, c. 67, ss. 29, 45, 46, 48; 1909 ss. 1 (1), 3 (4); 1912, s. 1(1).]

(2) In the case of the councils of the governors of Madras and Bombay (and, if so ordered by the governor of Bengal, in the case of his council), the advocate-general or acting advocate-general for the time being of the presidency shall be one of the members so nominated.

[1861, c. 67, s. 29; 1912, s. 1 (1), Prov. (b).]

(3) The Legislative Council of a lieutenant-governor not having an executive council, or of a chief commissioner, shall consist of members nominated or elected in accordance with rules made under this Act.

[1861, c. 67, ss. 45, 46, 48; 1909, s. 1 (1); 1912, s. 3].

(4) Councils constituted as provided by this section are in this Act referred to as local legislative councils, and Governors, Lieutenant-Governors and Chief Commissioners in Legislative Council are in this Act referred to as local legislatures.

[1892, s. 6; 1909, s. 1 (1); 1912, ss. 1 (1), 3.]

74. (1) The number of additional members nominated or elected to the legislative council of the Governor of Bengal, Madras or Bombay, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this Act:

Constitution of legislative councils in Bengal, Madras and Bombay.
[1909, s. 1 (2); 1912, s. 1 (1).]

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

(2) At least one-half of the additional members nominated or elected to any of those councils must be persons not in the civil or military service of the Crown in India; and if any such person accepts [any office

[1861, c. 67, s. 29; 1909, s. 1 (1); 1912, s. 1 (1).]

of profit]¹ under the Crown in India his seat as a member shall thereupon become vacant.

[1861, c. 67,
s. 29, 1909, s. 1
(1); 1912, s. 1
(1).]

(3) An additional member of any of those councils is not entitled to be present at meetings of the governor's executive council.

[1909, s. 6;
1912, s. 1 (1).]

(4) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected additional members of any of those legislative councils, and as to the qualifications for being, and for being nominated or elected, an additional member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and also as to the manner in which those rules are to be carried into effect.

²(4A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

(4B) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council.

[1909, ss. 6,
7.]

(5) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

Meetings of
legislative
councils of
Bengal,
Madras and
Bombay.

[1861, c. 67,
s. 36; 1912, s.
1 (1).]

75. (1) The legislative council of the Governor of Bengal, Madras or Bombay shall assemble at such times and places as the governor appoints.

(2) Any meeting of the council may be adjourned by the governor, or, under his authority, by the other person presiding.

[1861, c. 67,
s. 34; 1909,

(3) In the absence of the governor from any meeting of the council the person to preside thereat shall be the vice-president of the council, or, in his absence, the

¹ The words in square brackets were substituted for the word "office" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

² The new sub-sections (4A) and (4B) in square brackets were inserted by s. 1 (2) of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

senior civil member of the executive council present at the meeting or, during the discussion of the annual financial statement or of any matter of general public interest ¹ [or when questions are asked], the vice-president or the member appointed to preside in accordance with rules made under this Act.

s. 4 ; 1912, s. 1 (1).]

(4) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

[1861, c. 67, s. 34 ; 1912, s. 1 (1).]

76. (1) The number of members nominated or elected to the legislative council of a lieutenant-governor or chief commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this Act :

Constitution of legislative councils of lieutenant-governors and chief commissioners.
[1909, s. 1 (2); 1912, s. 3.]

Provided that the aggregate number of members so nominated or elected shall not, in the case of any legislative council mentioned in the first column of the First Schedule to this Act, exceed the number specified in that behalf in the second column of that Schedule.

(2) At least one-third of the persons so nominated or elected to the legislative council of a lieutenant-governor or chief commissioner must be persons not in the civil or military service of the Crown in India.

[1861, c. 67, ss. 45, 46 ; 1909, s. 1 (1); 1912, s. 3.]

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected members of any of those legislative councils and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

[1909, s. 6 ; 1912, s. 3.]

¹The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5. c. 37), printed *post*.

¹ [(3A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

(3B) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council.]

[1909, ss. 6, 7.]

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

Power to constitute new local legislatures.
[1861, c. 67, ss. 46, 47, 49.]

77. (1) When a new lieutenant-governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the Lieutenant-Governor in Legislative Council of the province, as from a date specified in the notification, a local legislature for that province, and define the limits of the province for which the Lieutenant-Governor in Legislative Council is to exercise legislative powers.

[1912, s. 3.]

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner.

Meetings of legislative councils of lieutenant-governors or chief commissioners.

[1861, c. 67, ss. 45, 46; 1909, s. 4; 1912, s. 3.]

78. (1) Every lieutenant-governor who has no executive council, and every chief commissioner who has a legislative council, shall appoint a member of his legislative council to be vice-president thereof.

(2) In the absence of the lieutenant-governor or chief commissioner from any meeting of his legislative council the person to preside thereat shall be the vice-president of the council, or, in his absence, the member of the council who is highest in official rank among those holding office under the Crown who are present at the meeting, or, during the discussion of the annual finan-

¹ The new sub-sections (3A) and (3B) in square brackets were inserted by s. 1 (2) of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

cial statement or of any matter of general public interest¹ [or when questions are asked], the vice-president or the member appointed to preside in accordance with rules made under this Act.

(3) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

[1861 c. 67,
ss. 45, 46;
1912, s. 3.]

79. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

Powers of
local
legislatures.
[1861, c. 67,
ss. 42, 48;
1912 ss. 1 (1)
3.]

(2) The local legislature of any province may, with the previous sanction of the governor-general, but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

[1892, s. 5;
1912, ss. 1 (1)
3.]

(3) The local legislature of any province may not, without the previous sanction of the governor-general, make or take into consideration any law—

[1861, c. 67,
ss. 43, 48;
1912, ss. 1 (1)
3.]

(a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India ; or

(b) regulating any of the current coin, or the issue of any bills, notes or other paper currency ; or

(c) regulating the conveyance of letters by the post office or messages by the electric telegraph ; or

(d) altering in any way the Indian Penal Code ; or

(e) affecting the religion or religious rites and usages of any class of British subjects in India ; or

¹The words in square brackets in section 78 (2) were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

(f) affecting the discipline or maintenance of any part of His Majesty's naval or military forces ; or

(g) regulating patents or copyright ; or

(h) affecting the relations of the Government with foreign princes or states.

[1861, c. 67,
s. 42, prov., s.
48; 1912 ss. 1
(1), 3.]

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

[1861, c. 67,
s. 43, prov.,
s. 48; 1892, s.
5, prov.]

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the governor-general in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the governor-general under this Act.

Business at
meetings.
[1861, c. 67,
ss. 38, 48;
1912, ss. 1 (1),
3.]

80. (1) At a meeting of a local legislative council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alterations of those rules.

[1851, c. 67,
s. 38, prov.,
s. 48; 1912,
ss. 1 (1), 3.]

(2) It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of the province or imposing any charge on those revenues.

[1909, ss. 5,
7; 1912, ss. 1
(2), 3.]

(3) Notwithstanding anything in the foregoing provisions of this section, the local Government may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the local legislative council, the discussion of the annual financial statement of the local Government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section for any council may provide for the appointment of a member of the council to preside at any such discussion ¹[or when ques-

¹The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

tions are asked] in the place of the governor, lieutenant-governor or chief commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council or the local legislature.

81. (1) When an Act has been passed at a meeting of a local legislative council, the governor, lieutenant-governor or chief commissioner, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

Assent to
Acts of local
legislatures.
[1861, c. 67, s.
39; 1912, ss.
1 (1), 3.]

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such Act, the Act has no effect.

(3) If the governor, lieutenant-governor or chief commissioner assents to any such Act, he shall forthwith send an authentic copy of the Act to the governor-general, and the Act shall not have validity until the governor-general has assented thereto and that assent has been signified by the governor-general to, and published by, the governor, lieutenant-governor or chief commissioner.

[1861, c. 67,
ss. 40, 48;
1912, ss. 1 (1)
3.]

(4) Where the governor-general withholds his assent from any such Act, he shall signify to the governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

82. (1) When any such Act has been assented to by the governor-general, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act.

Power of
Crown to dis-
allow Acts of
local legisla-
tures.
[1861, c. 67,
ss. 41, 48;
1912, ss. 1 (1)
3.]

(2) Where the disallowance of any such Act has been so signified, the governor, lieutenant-governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

83. (1) The local Government of any province for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that

Rules for
conduct of
legislative
business.

[1861, c. 67,
ss. 37, 48 ;
1912, s. 3.]

council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council).

[1861, c. 67,
ss. 37, 48 ;
1912, ss. 1 (1),
3.]

(2) A local legislature may, subject to the assent of the governor, lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local legislative council (including rules prescribing the mode of promulgation and authentication of laws passed by the council); but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.

Removal of
doubts as to
validity of
certain Indian
laws.

[1861, c. 67,
ss. 14, 24, 33 ;
1871, c. 34, s.
1.]

[1861, c. 67,
s. 24.]

Validity of Indian Laws.

84. A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

[1861, c. 67,
ss. 14, 33 ;
1912, ss. 1 (1)
3.]

(a) in the case of a law made by the Governor-General in Legislative Council ¹ [or a local legislature], because it affects the prerogative of the Crown ; or

(b) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction into the council or its enactment ; or

[1871, c. 34,
s. 1 ; 1912,
ss. 1 (1), 3.]

(c) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

¹The words in square brackets were inserted by s. 2 (2) of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5. c. 37), printed *post*.

¹[A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.]

PART VII.—Salaries, Leave of Absence, Vacation of Office, Appointments, etc.

85. (1) There shall be paid to the Governor-General of India and to the other persons mentioned in the Second Schedule to this Act, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in that Schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and, subject to or in default of any such order, as are payable at the commencement of this Act :

(2) Provided as follows :—

(a) an order affecting salaries of members of the governor-general's executive council may not be made without the concurrence of a majority of votes at a meeting of the Council of India :

(b) if any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him ;

(c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of India.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

Salaries and allowances of governor-general and certain other officials in India.

[1793, s. 32;
1833, s. 76;
1853, s. 35; 1861, c. 67, s. 4;
1880, s. 2, Sch. I; 1912, s. 1 (1).]

[1861, c. 67, s. 4.]

[1833, s. 77;
1853, s. 35;
1912, s. 1 (1).]

[1880, s. 4.]

[1813, s. 89;
1833, s. 76;
1853, s. 35;
1912, s. 1 (1).]

¹The words in square brackets were inserted by s. 2 (2) of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

Leave of absence to members of executive councils.
[1861, c. 67, s. 26; 1912, s. 1 (1)].

86. (1) The Governor-General in Council may grant to any of the ordinary members of his executive council, and a Governor in Council ¹[and a Lieutenant-Governor in Council] may grant to any member of his executive council, leave of absence under medical certificate for a period not exceeding six months.

(2) Where a member of council obtains leave of absence in pursuance of this section, he shall retain his office during his absence, and shall on his return and resumption of his duties be entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office shall become vacant.

Provisions as to absence from India or presidency.
[1793 s. 37; 1833 s. 79; 1912, s. 1 (1).]

87. (1) If the governor-general, or a governor, or the commander-in-chief of His Majesty's forces in India, and, subject to the foregoing provisions of this Act as to leave of absence, if any ordinary member of the executive council of the governor-general, or any member of the executive council of a governor departs from India, intending to return to Europe, his office shall thereupon become vacant.

² [(2)	*	*	*	*)
² [(3)	*	*	*	*)
² [(4)	*	*	*	*)
² [(5)	*	*	*	*)

Conditional appointments.
[1793, s. 27; 1833, s. 61; 1861, c. 67, ss. 2, 5; 1912 s. 1 (1).]

88. (1) His Majesty may, by warrant under his Royal Sign Manual, appoint any person conditionally to succeed to any of the offices of governor-general, governor, ordinary member of the executive council of the governor-general, or member of the executive council of a governor, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and revoke any such conditional appointment.

(2) A person so conditionally appointed shall not be entitled to any authority, salary or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

¹ The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

² Sub-sections (2), (3), (4) and (5) of s. 87 were repealed by the Second Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

89. (1) If any person entitled under a conditional appointment to succeed to the office of governor-general, or appointed absolutely to that office, is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of governor-general before he takes his seat in council, he may make known by notification his appointment and his intention to assume the office of governor-general.

Power for governor-general to exercise powers before taking seat.
[1858, s. 63.]

(2) After the notification, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the council after the date of the notification, but before the communication thereof to the council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of governor-general.

(4) When the office of governor-general is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior ordinary member of the council then present, shall preside therein, with the same powers as the governor-general would have had if present.

[1858, s. 63;
1909, s. 4.]

90. (1) If a vacancy occurs in the office of governor-general when there is no conditional or other successor in India to supply the vacancy, the governor who was first appointed to the office of governor by His Majesty shall hold and execute the office of governor-general until a successor arrives or until some person in India is duly appointed thereto.

Temporary vacancy in office of governor-general.
[1861, c. 67,
s. 50; 1912,
s. 4 (1).]

(2) Every such acting governor-general, while acting as such, shall have and may exercise all the rights and powers of the office of governor-general, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the salary and allowances appertaining to his office of governor; and his office of governor shall be supplied, for the time during which he acts as governor-general, in the manner directed by this Act with respect to vacancies in the office of governor.

[1793, s. 50;
1861, c. 67,
s. 50.]

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes the office of governor-general, necessary to exercise the powers thereof before he takes his seat in council, he

[1861, c. 67,
s. 51.]

may make known by notification his appointment, and his intention to assume the office of governor-general, and thereupon the provisions of this Act respecting the assumption of the office by a person conditionally appointed to succeed thereto shall apply.

[1793, ss. 29,
30; 1833, s.
62; 1861, c.
67, s. 51;
1909, s. 4 (1).]

(4) Until such a governor has assumed the office of governor-general, if no conditional or other successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior ordinary member of the executive council, shall hold and execute the office of governor-general until the vacancy is filled in accordance with the provisions of this Act.

[1793, s. 29;
1833, s. 62;
1861, c. 27,
s. 51; 1909,
s. 4.]

(5) Every vice-president or other member of council so acting as governor-general, while so acting, shall have and may exercise all the rights and powers of the office of governor-general, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as member of council for that period.

Temporary
vacancy in
office of
governor.

[1793, ss. 29,
30, 50; 1833,
s. 63; 1909,
s. 4; 1912,
s. 1 (1).]

91. (1) If a vacancy occurs in the office of governor when no conditional or other successor is on the spot to supply the vacancy, the vice-president, or, if he is absent, the senior member of the governor's executive council, or, if there is no council, the chief secretary to the local Government, shall hold and execute the office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

[1793, s. 29;
1833, s. 63;
1912, s. 1 (1).]

(2) Every such acting governor shall, while acting as such, be entitled to receive the emoluments and advantages appertaining to the office of governor, foregoing the salary and allowances appertaining to his office of member of council or secretary.

Temporary
vacancy in
office of
member of
an executive
council.

[1793, ss. 31,
34; 1861,
c. 67, s. 27;
1912, s. 1 (1).]

92. (1) If a vacancy occurs in the office of an ordinary member of the executive council of the governor-general or a member of the executive council of a governor, and there is no conditional or other successor present on the spot, the Governor-General in Council or Governor in Council, as the case may be, shall supply the vacancy by appointing a temporary member of council.

(2) Until a successor arrives the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the

rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If any ordinary member of the executive council of the governor-general or any member of the executive council of a governor is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave ¹ [or special duty], then, if any person has been conditionally appointed to succeed to his office and is on the spot, the place of that member shall be supplied by that person, and, if no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person conditionally or temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive half the salary of the member of council whose place he fills, and also half the salary of any other office which he may hold, if he hold any such office, the remaining half of such last named salary being at the disposal of the Governor-General in Council or Governor in Council, as the case may be.

(5) Provided as follows :—

(a) no person may be appointed a temporary member of council who might not have been appointed under this Act to fill the vacancy supplied by the temporary appointment ; and

(b) if the Secretary of State informs the governor-general that it is not the intention of His Majesty to fill a vacancy in the governor-general's executive council, no temporary appointment may be made under this section to fill the vacancy, and if any such

[1874, c. 91 s.
2.]

¹ The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

temporary appointment has been made before the date of the receipt of the information by the governor-general, the tenure of the person temporarily appointed shall cease from that date.

Vacancies in legislative councils.

[1861, c. 67, ss. 12, 31, 48; 1912, ss. 1 (1) 3.]

93. (1) A nominated or elected member of the Indian Legislative Council or of a local legislative council may resign his office to the governor-general or to the governor, lieutenant governor or chief commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

[1892, s. 4 (1); 1912, ss. 1 (1), 3.]

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the governor-general, governor, lieutenant-governor or chief commissioner, as the case may be, may, by notification published in the Government Gazette, declare that the seat in council of that member has become vacant.

Leave.

[1837, ss. 1, 2, 3; 1853, s. 32.]

94. Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make rules as to the absence on leave ¹[or special duty] of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such ²[absence may be permitted.]

Power to make rules as to Indian appointments.
[1833, s. 78, 1858, s. 30.]

95. (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions in offices under the Crown in India, and may reinstate officers and servants suspended or removed by any of those authorities.

[1858, s. 30.]

(2) Subject to such rules, all appointments to offices and commands in India, and all promotions, which, by law, or under any regulations, usage or

1. The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

2. The words in square brackets were substituted for the words "leave may be granted" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions and restrictions then affecting such appointments and promotions, respectively, continue to be made in India by the like authority.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India.

No disabilities in respect of religion, colour or place of birth. [1833, s. 87 ; 1914, s. 3.]

¹[**96A.** Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.]

Qualification of rulers and subjects of certain states for office.

PART VIII.—The Indian Civil Service.

97. (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners, of British subjects ²[and of persons in respect of whom a declaration has been made under the last foregoing section who are] desirous of becoming candidates for appointment to the Indian Civil Service.

Rules for admission to the Indian Civil Service. [1858, s. 32 ; 1914, s. 3.]

(2) The rules shall prescribe the age and qualifications of the candidates, and the subjects of examination.

1. The new section 96A in square brackets was inserted by s. 3 of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

2. The words in square brackets were inserted by s. 4 of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

¹[(2A) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules.]

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(4) The candidates certified to be entitled under the rules shall be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council.

Offices reserved to the Indian Civil Service. [1861, c. 54, s. 2.]

98. Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

Power to appoint certain persons to reserved offices. [1870, c. 3, s. 6.]

99. (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India and born ²[* *] of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary

1. The new sub-section (2A) was inserted by s. 4 of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 61), printed, *post*.

2. The words "in British India" were repealed by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

100. (1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

Power to make provisional appointments in certain cases.
[1861, c. 54; s. 3.]

(2) Every such appointment shall be provisional only, and shall forthwith be reported to the Secretary of State, with the special reasons for making it; and, unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment intimates such approval to the authority by whom the appointment was made, the appointment shall be cancelled.

[1861, c. 54, s. 4]

PART IX.—The Indian High Courts.

Constitution.

101. (1) The high courts referred to in this Act are the high courts of judicature for the time being established in British India by letters patent.

Constitution of high courts

(2) Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint :

[1861, c. 104, ss. 2, 16; 1911, c. 18 ss. 1, 3.]

Provided as follows :—

(i) the Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the

judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act ;

(ii) the maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.

(3) A judge of a high court must be—

[1861, c. 104 ;
ss. 2, 16, 19.]

(a) a barrister of England or Ireland, or a member of the Faculty of advocates in Scotland, of not less than five years' standing ; or

[1861, c. 104,
ss. 2, 16.]

(b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge ; or

(c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years ; or

(d) a person having been a pleader of a high court for a period of not less than ten years.

[1861, c. 104,
ss. 2, 16 ;
1911, c. 18,
s. 3.]

(4) Provided that not less than one-third of the judges of a high court, including the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The high court for the North-Western Provinces may be styled the high court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

Tenure of
office of
judges of high
courts.

[1861, c. 104,
ss. 4, 16 ;
1912, s. 1 (1)
prov. (a).]

102. (1) Every judge of a high court shall hold his office during His Majesty's pleasure.

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in other cases to the local Government.

Precedence of
Judges of high
courts.

[1861, c. 104,
ss. 5, 16.]

103. (1) The chief justice of a high court shall have rank and precedence before the other judges of the same court.

(2) All the other judges of a high court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

104. (1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage, of the chief justices and other judges of the several high courts, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

Salaries, etc., of judges of high courts.
[1797, s. 2 ;
1800, ss. 8, 9 ;
1825, s. 4 ;
1861, c. 104
ss. 6, 16.]

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

[1800, s. 7 ;
1813, s. 89 ;
1823, s. 11 ;
1861, c. 104,
ss. 11, 16.]

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

[1825, s. 5 ;
1861, c. 104,
ss. 11, 16.]

(4) If a judge of a high court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

105. (1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

Provision for vacancy in the office of chief justice or other judge.
[1861, c. 104,
ss. 7, 16 ;
1912, s. 1 (1)
prov. (a).]

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in

Council in the case of the high court at Calcutta, and the local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

Jurisdiction.

Jurisdiction of high courts.

[1772, ss. 13, 14; 1780, s. 17; 1793, s. 156; 1797, ss. 11, 13; 1800, ss. 2, 5, 20; 1823, ss. 7, 17; 1861, c. 104, ss. 9, 11, 16.]

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

¹ [(1A) The letters patent establishing, or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.]

[1780, s. 8; 1797, s. 11, 3rd proviso; 1800, s. 2; 1823, s. 7; 1861, c. 104, s. 11, 16.]

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

Powers of high court with respect to subordinate courts.

[1772, s. 17; 1797, s. 11 1st, proviso.]

107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

(a) call for returns;

¹ New sub-section (1A) in square brackets was inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any ¹ [law] for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108. (1) Each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

Exercise of jurisdiction by single judges or division courts.

[1861, c. 104, ss. 13, 16.]

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

[1861, c. 104, ss. 14, 16.]

109. (1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of ² [any British subject for the time being within] any part of India outside British India.

Power for Governor-General in Council to alter local limits of jurisdiction of high courts.
[1865, c. 15, s. 3].

¹ The word "law" in square brackets was substituted for the word "Act" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

² The words in square brackets were substituted for the words "Christian subjects of His Majesty resident in" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

[1865, c. 15,
s. 4].

(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the governor-general notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

Exemption
from
jurisdiction of
high court.

[1772 ss. 15,
17; 1780, s. 1;
1797, s. 11,
1st. and 2nd.
provisos;
1800, s. 3;
1823, s. 7,
prov.; 1861,
c. 104, s. 11,
16; 1912 s. 1
(1).]

[1780, s. 1;
1797, s. 11,
2nd proviso.]

[1861, c. 104,
ss. 15, 16;
1912, s. 16,
prov. (a).]

[1772, s. 15.]

[1772, s. 17;
1797, s. 11
1st. proviso;

1800, s. 2;
1823, s. 7;
1861, c. 104,
ss. 11, 16.]

Written order
by governor-
general
justification

110. (1) The governor-general, each governor, ¹[lieutenant-governor and chief commissioner], and each of the members of ²[the executive council of the governor-general or of a governor or lieutenant-governor], shall not—

(a) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by any of them in his public capacity only; nor

(b) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor

(c) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the chief justices and other judges of the several high courts.

111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its

¹The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

²The words in square brackets were substituted for words "their respective executive councils" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the governor-general, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

for act in any court in India.
[1780 ss. 2, 3, 4; 1861, c. 104, ss. 11, 16.]

Law to be administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Law to be administered in cases of inheritance and succession.
[1780, s. 17, prov.; 1797, s. 13; 1800 s. 2; 1823, s. 7; 1861, c. 104, s. 11.]

Additional High Courts.

113. His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act; and, where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Power to establish additional high courts.
[1861, c. 104, s. 16; 1911, c. 18, s. 2.]

Advocate-General.

114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras and Bombay.

Appointment and powers of advocate-general.
[1858, s. 29.]

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such

[1813, s. 111, 1861, c. 104, s. 11.]

proceedings as may be taken by His Majesty's Attorney-General in England.

¹[(3) On the occurrence of a vacancy in the office of advocate-general, or during any absence or deputation of an advocate-general, the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as advocate-general; and the person so appointed may exercise the powers of an advocate-general until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the advocate-general has returned from his absence or deputation, as the case may be, or until the Governor-General in Council or the Local Government, as the case may be, cancels the acting appointment.]

PART X.—Ecclesiastical Establishment.

Jurisdiction
of Indian
bishops.

[1813, ss. 51,
52; 1833,
ss. 93, 94.]

115. (1) The bishops of Calcutta, Madras and Bombay have and may exercise within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the ministers of the Church of England therein, as His Majesty may, by letters patent, direct.

[1833, s. 94.]

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

[1833, s. 93.]

(3) Each of the bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by letters patent, may be pleased to direct.

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

[1874, c. 77,
s. 13.]

(5) Nothing in this Act or in any such letters patent as aforesaid shall prevent any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of juris-

¹ The new sub-section (3) in square brackets was inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

diction, in any diocese or reputed diocese at the request of the bishop thereof.

116. ¹ [* * * * *]

117. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorising and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

Consecration of person resident in India appointed to bishopric.
[1833, s. 99.]

118. (1) The bishops and archdeacons of Calcutta, Madras and Bombay are appointed by His Majesty by letters patent, and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed by the Secretary of State in Council; but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

Salaries and allowances of bishops and archdeacons.
[1813, s. 49 ;
1833, ss. 89, 101 ; 1842, ss. 1, 3, 4 ;
1871, c. 62, s. 1, 1st. prov. ;
1880, ss. 2, 3, 4 sch. 1.]

(2) The remuneration fixed for a bishop or archdeacon under this section shall commence on his taking upon himself the execution of his office, and be the whole profit or advantage which he shall enjoy from his office during his continuance therein, and continue so long as he exercises the functions of his office.

[1813, s. 50 ;
1833, s. 90.]

(3) There shall be paid out of the revenues of India the expenses of visitations of the said bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

[1823, s. 5 ;
1833, s. 100.]

119. (1) If the Bishop of Calcutta dies during his voyage to India for the purpose of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

Payments to representative of bishops.
[1825, s. 5 ;
1833, s. 97.]

¹ Section 116 was repealed by the Second Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

(2) If the Bishop of Calcutta, Madras or Bombay dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

Pensions to
bishops.

[1823, s. 3;
1825, s. 15;
1833, ss. 96,
98.]

120. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the ¹[Secretary of State] grant, out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay or archdeacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta ²[Madras or Bombay] for seven years, or seven hundred and fifty pounds per annum if he has resided in India as Bishop of Calcutta, ²[Madras or Bombay] for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum, ³[* *] if he has resided in ⁴[* *] India as such bishop for fifteen years.

Furlough
rules.

[1842, ss. 1, 2,
3; 1871, c. 62.]

121. His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

Establishment
of Chaplains
of Church of
Scotland.

[1833, s. 102.]

122. (1) Two members of the establishment of chaplains maintained in each of the presidencies of Bengal, Madras and Bombay must always be ministers of the Church of Scotland, and shall be entitled to have, out of

¹The words in square brackets were substituted for the words "Chancellor of the Exchequer" by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

²The words in square brackets were inserted by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

³The words "to be paid quarterly" were repealed by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

⁴The word "British" was repealed by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed *post*.

the revenues of India, such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

123. Nothing in this Act shall prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion or community of Christians, not being of the church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

Saving as to grants to Christians.
[1833, s. 102, prov.]

PART XI.—Offences, Procedure and Penalties.

124. If any person holding office under the Crown in India does any of the following things, that is to say,—

(1) if he oppresses any British subject within his jurisdiction or in the exercise of his authority ; or

Certain acts to be mis-demeanours.
[1770, s. 4 ;
1772, s. 24 ;
1793, s. 62 ;
1833, s. 80.]

Oppression.
[1770, s. 4.]

(2) if (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys, or wilfully omits, forbears or neglects to execute, any orders or instructions of the Secretary of State ; or

Wilful disobedience.
[1793, s. 65 ;
1833, s. 80.]

(3) if he is guilty of any wilful breach of the trust and duty of his office ; or

Breach of duty.
[1793, s. 65 ;
1833, s. 80.]

(4) if, being the governor-general, or a governor, lieutenant-governor or chief commissioner, or a member of the executive council of the governor-general or of a governor or lieutenant-governor, or being a person employed or concerned in the collection of revenue or the administration of justice, he

Trading.
[1793, s. 137 ;
1833, s. 76 ;
1912, s. 1 (1).]

is concerned in, or has any dealings or transactions by way of, trade or business in any part of India, for the benefit either of himself or of any other person, otherwise than as a shareholder in any joint stock company or trading corporation ; or

Receiving presents.

[1772, s. 23 ;
1861, c. 104
s. 11.]

- (5) if he demands, accepts or receives, by himself or another, in the discharge of his office, any gift, gratuity or reward, pecuniary or otherwise, or any promise of the same, except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents, and except in the case of fees paid or payable to barristers, physicians, surgeons and chaplains in the way of their respective professions,

[1793, ss. 62,
63 ; 1833, ss.
76, 80.]

he shall be guilty of a misdemeanour ; and if he is convicted of having demanded, accepted or received any such gift, gratuity or reward, the same, or the full value thereof, shall be forfeited to the Crown, and the court may order that the gift, gratuity or reward, or any part thereof, be restored to the person who gave it, or be given to the prosecutor or informer, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct.

Loans to Princes or Chiefs.

[1797, s. 28 ;
1912, s. 1 (1).]

125. (1) If any European British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a local Government, by himself or another,—

- (a) lends any money or other valuable thing to any prince or chief in India ; or
- (b) is concerned in lending money to, or raising or procuring money for, any such prince or chief, or becomes security for the repayment of any such money ; or
- (c) lends any money or other valuable thing to any other person for the purpose of being lent to any such prince or chief ; or
- (d) takes, holds, or is concerned in any bond, note or other security granted by any such prince or chief for the repayment of any

loan or money hereinbefore referred to,
he shall be guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held or enjoyed, either directly or indirectly, for the use and benefit of any European British subject, contrary to the intent of this section, shall be void.

126. (1) If any person carries on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of any part of British India, with any prince, chief, land-holder or other person having authority in India, or with the commander, governor, or president of any foreign European settlement in India, or any correspondence, contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or a Governor in Council, he shall be guilty of a misdemeanour; and the governor-general or governor may issue a warrant for securing and detaining in custody any person suspected of carrying on any such correspondence.

Carrying on dangerous correspondence.
[1793, ss. 45, 46; 1912, s. 1 (1).]

(2) If, on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council, there appear reasonable grounds for the charge, the governor-general or governor may commit the person suspected or accused to safe custody, and shall within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge on which he is committed.

[1793, ss. 45, 46; 1912, s. 1 (1).]

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence shall be examined and cross-examined on oath in the presence of the person charged, and their depositions and examination shall be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge and for continuing the confinement, the person charged shall remain in custody until he is brought to trial in India or sent to England for trial.

(6) All such examinations and proceedings, or attested copies thereof under the seal of the high court, shall

be sent to the Secretary of State as soon as may be, in order to their being produced in evidence on the trial of the person charged in the event of his being sent for trial to England.

(7) If any such person is to be sent to England, the governor-general or governor, as the case may be, shall cause him to be so sent at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he shall be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section shall be received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses.

127. (1) If any person holding office under the Crown in India commits any offence under this Act, or any offence against any person within his jurisdiction or subject to his authority, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

Prosecution
of offences in
England.

[1770, s. 4 ;
1772, s. 39 ;
1793, ss. 140,
141.]

[1793, s. 67.]

(2) Every British subject shall be amenable to all courts of justice in the United Kingdom, of competent jurisdiction to try offences committed in India, for any offence committed within India and outside British India, as if the offence had been committed within British India.

Limitation for
prosecutions
in British
India.

[1793, s. 141 ;
1861, c. 104,
ss. 11, 16.]

Penalties.

[1770, s. 4 ;
1772, s. 39 ;
1793, s. 140.]

128. Every prosecution before a high court in British India in respect of any offence referred to in the last foregoing section must be commenced within six years after the commission of the offence.

129. If any person commits any offence referred to in this Act he shall be liable to such fine or imprisonment or both as the court thinks fit, and shall be liable, at the discretion of the court, to be adjudged to be incapable of serving the Crown in India in any office, civil or military ; and, if he is convicted in British India by a high court, the court may order that he be sent to Great Britain.

PART XII.—Supplemental.**Repeal of Acts.**

130. The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that Schedule : Repeal.

Provided that this repeal shall not affect—

- (a) the validity of any law, charter, letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or
- (b) the validity of any appointment, or any grant or appropriation of money or property, made under any enactment hereby repealed, or
- (c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act. [1858, ss. 13, 18, 56, 58 ; 1860, c. 100, s. 1 ; 1869, c. 97, s. 2.]

Savings.

131. (1) Nothing in this Act shall derogate from any rights vested in His Majesty, or any powers of the Secretary of State in Council, in relation to the government of India. Saving as to certain rights and powers. [1861, c. 67, s. 52.]

(2) Nothing in this Act shall affect the power of Parliament to control the proceedings of the Governor-General in Council, or to repeal or alter any law made by any authority in British India, or to legislate for British India and the inhabitants thereof. [1833, s. 51.]

(3) Nothing in this Act shall affect the power of the Governor-General in Legislative Council to repeal or alter any of the provisions mentioned in the Fifth Schedule to this Act, or the validity of any previous exercise of this power. [1861, c. 67, s. 22, proviso ; 1861, c. 104, ss. 9, 11, 13 ; 1865, c. 15, s. 6.]

132. All treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty, and all contracts made and liabilities incurred by the East India Company, Treaties, contracts and liabilities of East India Company. [1858, s. 67.]

may, so far as they are outstanding at the commencement of this Act, be enforced by and against the Secretary of State in Council.

Orders of
East India
Company.
[1858, s. 59.]

133. All orders, regulations and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the Affairs of India, are, so far as they are in force at the commencement of this Act, deemed to be orders, rules and directions made or given by the Secretary of State under this Act.

Definitions, Short Title and Commencement.

Definitions.

134. In this Act, unless the context otherwise requires,—

[1833, s. 39 ;
1861, c. 67, s.
53.]

(1) "Governor-General in Council" means the governor-general in executive council ;

[1833, s. 56 ;
1861, c. 67, s.
53 ; 1912, s.
1 (1).]

(2) "Governor in Council" means a governor in executive council ;

[1909, s. 3 (3).]

(3) "Lieutenant-Governor in Council" means a lieutenant-governor in executive council ;

[1770, s. 4 ;
1772, s. 39 ;
1793, ss. 35,
62, 65 ; 1833,
ss. 74, 80, 87 ;
1861, c. 54, ss.
2, 3 ; 1870, c.
3, s. 6.]

(4) "Local Government" means a Governor in Council, Lieutenant-Governor in Council, lieutenant-Governor or chief commissioner ;

(5) "office" includes place and employment ;

(6) "province" includes a presidency ; and

(7) references to rules made under this Act include rules or regulations made under any enactment hereby repealed, until they are altered under this Act.

Short title and
commence-
ment.

135. This Act may be cited as the Government of India Act, 1915, and shall come into operation on the first day of January one thousand nine hundred and sixteen.

SCHEDULES.*Sections 63 (2), 74 (1), 76 (1).***FIRST SCHEDULE.****Maximum Number of Nominated or Elected Members of Legislative Councils.**

Legislative Council.	Maximum Number.	[1909, Sch. I ; 1912, ss. 3, 4 (1) Sch , Pt. I.]
Indian Legislative Council	Sixty.	
Local Legislative Councils—		
Bengal Legislative Council	Fifty.	
Madras Legislative Council	Fifty.	
Bombay Legislative Council	Fifty.	
Bihar and Orissa Legislative Council	Fifty.	
United Provinces Legislative Council	Fifty.	
Punjab Legislative Council	Thirty.	
Burma Legislative Council	Thirty.	
Assam Legislative Council	Thirty.	
Central Provinces Legislative Council	Thirty.	
Legislative Council of the lieutenant-governor of any province hereafter constituted.	Thirty.	

SECOND SCHEDULE.*Section 85.***Official Salaries, etc.**

Officer.	Maximum annual salary.	
Governor-General of India	Two hundred and fifty-six thousand rupees.	[1833, s. 76.]
Governor	One hundred and twenty-eight thousand rupees.	[1833, s. 76.] 1912, s. 1 (1).]
Commander-in-Chief of His Majesty's forces in India	One hundred thousand rupees.	[1853, s. 35.]
Lieutenant-Governor	One hundred thousand rupees.	[1853, s. 35.]
Ordinary member of the governor-General's executive council.	*	[1833, s. 76 ; 1912, s. 1 (1).]
Member of a governor's executive council	Sixty-four thousand rupees.	

*No statutory maximum has been fixed.

THIRD SCHEDULE.*Section 98.***Offices reserved to the Indian Civil Service.****PART I.—GENERAL.**

1. Secretaries, Joint Secretaries, Deputy Secretaries and Under Secretaries to the several Governments in India, except the Secretaries, Joint Secretaries, Deputy Secretaries and Under Secretaries in the Army, Marine and Public Works Departments.

[1861, c. 54,
Sch.]

2. Accountants-General.
 3. Members of the Board of Revenue in the presidencies of Bengal and Madras, the United Provinces of Agra and Oudh and the Province of Bihar and Orissa.
 4. Secretaries to those Boards of Revenue.
 5. Commissioners of Customs, Salt, Excise and Opium.
 6. Opium agent.
- PART II.—OFFICES IN THE PROVINCES WHICH WERE KNOWN IN THE YEAR 1861 AS "REGULATION PROVINCES."
7. District and Sessions Judges.
 8. Additional District or Sessions Judges and Assistant Sessions Judges.
 9. District Magistrates.
 10. Joint Magistrates.
 11. Assistant Magistrates.
 12. Commissioners of Revenue.
 13. Collectors of Revenue or Chief Revenue Officers of districts.
 14. Assistant Collectors.

FOURTH SCHEDULE.

Section 130.

Acts Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
10 Geo. 3, c. 47 ...	The East India Company Act, 1770	The whole Act.
13 Geo. 3, c. 63 ...	The East India Company Act, 1772.	The whole Act, except secs. forty-two, forty-three & forty-five.
21 Geo. 3, c. 70 ...	The East India Company Act, 1780.	The whole Act, except section eighteen.
26 Geo. 3, c. 57 ...	The East India Company Act, 1786.	Section thirty-eight.
33 Geo. 3, c. 52 ...	The East India Company, Act 1793.	The whole Act.
37 Geo. 3, c. 142 ...	The East India Act, 1797.	The whole Act, except section twelve.
39 & 40 Geo. 3, c. 79 ...	The Government of India Act, 1800	The whole Act.
53 Geo. 3, c. 155 ...	The East India Company Act, 1813.	The whole Act.
58 Geo. 3, c. 84 ...	The Indian Presidency Towns Act, 1815.	The whole Act.
4 Geo. 4, c. 71 ...	The Indian Bishops and Courts Act, 1823.	The whole Act.
6 Geo. 4, c. 85 ...	The Indian Salaries and Pensions Act, 1825.	The whole Act.
7 Geo. 4, c. 56 ...	The East India Officers Act, 1826.	The whole Act.
3 & 4 Will. 4, c. 85 ...	The Government of India Act, 1833.	The Whole Act, except section one hundred and twelve.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Will. 4, c. 52 ...	The India (North-West Provinces) Act, 1835.	The whole Act.
7 Will. 4 and 1 Vict., c. 47.	The India Officers' Salaries Act, 1837.	The whole Act.
5 & 6 Vict., c. 119 ...	The Indian Bishops Act, 1842.	The whole Act.
16 & 17 Vict., c. 95 ...	The Government of India Act, 1853.	The whole Act.
17 & 18 Vict., c. 77 ...	The Government of India Act, 1854.	The whole Act.
21 & 22 Vict., c. 106 ...	The Government of India Act, 1858.	The whole Act, except section four.
22 & 23 Vict., c. 41 ...	The Government of India Act, 1859.	The whole Act.
23 & 24 Vict., c. 100 ...	The European Forces (India) Act, 1860.	The whole Act.
23 & 24 Vict., c. 102 ...	The East India Stock Act, 1860.	The whole Act, except section six.
24 & 25 Vict., c. 54 ...	The Indian Civil Service Act, 1861.	The whole Act.
24 & 25 Vict., c. 67 ...	The Indian Councils Act, 1861.	The whole Act.
24 & 25 Vict., c. 104 ...	The Indian High Courts Act, 1861.	The whole Act.
28 & 29 Vict., c. 15 ...	The Indian High Courts Act, 1865.	The whole Act.
28 & 29 Vict., c. 17 ...	The Government of India Act, 1865.	The whole Act.
32 & 33 Vict., c. 97 ...	The Government of India Act, 1869.	The whole Act.
32 & 33 Vict., c. 98 ...	The Indian Councils Act, 1869.	The whole Act.
33 & 34 Vict., c. 3 ...	The Government of India Act, 1870.	The whole Act.
33 & 34 Vict., c. 59 ...	The East India Contracts Act, 1870.	The whole Act.
34 & 35 Vict., c. 34 ...	The Indian Councils Act, 1871.	The whole Act.
34 & 35 Vict., c. 62 ...	The Indian Bishops Act, 1871.	The whole Act.
37 & 38 Vict., c. 3 ...	The East India Loan Act, 1874.	Section fifteen.
37 & 38 Vict., c. 77 ...	The Colonial Clergy Act, 1874.	Section thirteen.
37 & 38 Vict., c. 91 ...	The Indian Councils Act, 1874.	The whole Act.
43 Vict., c. 3 ...	The Indian Salaries and Allowances Act, 1880.	The whole Act.
44 & 45 Vict., c. 63 ...	The India Office Auditor Act, 1881.	The whole Act.
47 & 48 Vict., c. 38 ...	The Indian Marine Service Act, 1884.	Sections two, three, four and five.
55 & 56 Vict., c. 14 ...	The Indian Councils Act, 1892.	The whole Act.
3 Edw. 7, c. 11 ...	The Contracts (India Office) Act, 1903.	The whole Act.

Session and Chapter.	Short Title.	Extent of Repeal.
4 Edw. 7, c. 26 ...	The Indian Councils Act, 1904.	The whole Act.
7 Edw. 7, c. 35 ...	The Council of India Act, 1907.	The whole Act.
9 Edw. 7, c. 4 ...	The Indian Councils Act, 1909.	The whole Act.
1 & 2 Geo. 5, c. 18 ...	The Indian High Courts Act, 1911.	The whole Act.
1 & 2 Geo. 5, c. 25 ...	The Government of India (Amendment) Act, 1911.	The whole Act.
2 & 3 Geo. 5, c. 6 ...	The Government of India Act, 1912.	The whole Act.

¹[FIFTH SCHEDULE.

Section 131 (3).]

Provisions of this Act which may be repealed or altered by the Governor-General in Legislative Council.

Section.	Subject.
62	Power to extend limits of presidency towns.
106	Jurisdiction, powers and authority of high courts.
108 (1)	Exercise of jurisdiction of high court by single judges or division courts.
109	Power for Governor-General in Council to alter local limits of jurisdiction of high courts, etc.
110	Exemption from jurisdiction of high courts.
111	Written order by Governor-General in Council a justification for act in high court.
112	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2)	Powers of advocate general.
124 (1)	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the governor-general, a governor, or a member of the executive council of the governor-general or of a governor.	Receiving presents.
125	Loans to princes or chiefs.
126	Carrying on dangerous correspondence.
128	Limitation for prosecutions in British India.
129	Penalties.]

¹ The new Fifth Schedule in square brackets was substituted for the original Fifth Schedule by the First Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37), printed **post**.

Government of India (Amendment) Act, 1916.

[6 & 7 GEO. 5. CH. 37.]

ARRANGEMENT OF SECTIONS.

SECTION.

1. Elections and nominations for legislative councils.
 2. Removal of doubts as to validity of certain Indian laws.
 3. Qualification of rulers and subjects of certain states for office.
 4. Admission to Indian Civil Service.
 5. Removal of doubts as to validity of Orders in Council under Foreign Jurisdiction Act.
 6. Transfer of India stock by deed.
 7. Minor amendments, repeals, and saving.
 8. Short title, commencement, printing and construction.
- FIRST SCHEDULE.—Further amendments of the Government of India Act, 1915.

SECOND SCHEDULE.—Enactments repealed.

Government of India (Amendment) Act, 1916.

[6 & 7 GEO. 5. CH. 37.]

An act to amend certain enactments relating to the government of India, and to remove doubts as to the validity of certain Orders in Council made for india.

[23rd August, 1916.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Elections and nominations for legislative councils. 5 & 6 Geo. 5, c. 61.

1. (1) In section sixty-three of the Government of India Act, 1915 (in this Act referred to as "the principal Act"), shall be inserted the following sub-sections :—

"(6A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

"(6B) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council."

(2) In sections seventy-four and seventy-six of the principal Act corresponding sub-sections shall be inserted, and shall be numbered (4A) and (4B) in section seventy-four and (3A) and (3B) in section seventy-six.

(3) This section shall apply to and shall validate rules and nominations made as well before as after the commencement of this Act.

Removal of doubts as to validity of certain Indian laws.

2. (1) In section seventy-one of the principal Act shall be inserted the following sub-section :—

"(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative author-

ities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory."

(2) In section eighty-four of the principal Act, after the words "Governor-General in Legislative Council" shall be inserted the words "or a local legislature," and, at the end of the section, shall be inserted the following words :—

"A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void."

(3) This section shall apply to and shall validate laws made as well before as after the commencement of this Act.

3. After section ninety-six of the principal Act shall be inserted the following section :—

"96A. Notwithstanding anything in any other enactment, the Governor-general in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office."

Qualification of rulers and subjects of certain states for office.

4. In section ninety-seven of the principal Act, after the words "British subjects" shall be inserted the words "and of persons in respect of whom a declaration has been made under the last foregoing section who are," and, after sub-section (2), shall be inserted the following sub-section :—

Admission to Indian Civil Service.

"(2A) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restric-

tions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules."

Removal of doubts as to validity of Orders in Council under Foreign Jurisdiction Act 53 & 54 Vict., c. 37.

5. An Order of His Majesty in Council heretofore or hereafter made under the Foreign Jurisdiction Act, 1890, empowering the Governor-General of India in Council to make rules and orders in respect of courts or administrative authorities acting for any territory, shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

Transfer of India stock by deed.

6. (1) India stock may, if registered for the time being as stock transferable by deed in manner provided by regulations made under this section, be transferred by deed.

(2) The Banks of England and Ireland respectively, with the concurrence of the Secretary of State in Council, shall provide by regulations for a separate stock register being kept for India stock which is for the time being transferable by deed, for the conditions upon which stock is to be entered in or removed from that register, for the mode in which the transfer by deed is to be carried out, and for the payment of any fees in respect of the entry or removal of stock in or from the register and the carrying out of any transfer of stock by deed.

(3) The provisions of all enactments relating to India stock which are in force at the commencement of this Act shall apply to stock transferable by deed in pursuance of this section as they apply to stock transferable in the books of the Banks of England or Ireland, or of the Secretary of State in Council, except so far as express provision is made to the contrary by this section or by the regulations made thereunder.

(4) No stamp duty shall be payable in respect of any deed of transfer of India stock or any dividend warrant or register certificate relating to India stock.

(5) In this section the expression "India stock" means any stock created and issued, whether before or after the commencement of this Act, by the Secretary of State in Council under the authority of Parliament.

7. (1) The principal Act shall be further amended in manner appearing in the first Schedule to this Act.

Minor amendments, repeals, and saving.

(2) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(3) Nothing in this Act shall affect any right acquired before the commencement of this Act under any judgment or order of a court of competent jurisdiction.

8. (1) This Act may be cited as the Government of India (Amendment) Act, 1916, and the principal Act and this Act may be cited together as the Government of India Acts, 1915 and 1916.

Short title, commencement, printing and construction.

(2) This Act shall come into operation on the first day of September, one thousand nine hundred and sixteen.

(3) Where any enactment or word is directed by this Act, or by any Act for the time being in force, whether passed before or after the commencement of this Act, to be inserted in or added to the principal Act, or to be substituted in the principal Act for any other enactment or word, or where any enactment or word in the principal Act is so directed to be repealed, then all copies of the principal Act printed by His Majesty's printers after that direction takes effect shall be printed with that enactment or word inserted in or added to the Act, or printed therein in lieu of any enactment or word for which the same is substituted, or omitted therefrom, according as the direction requires, and with the sections and sub-sections numbered in accordance with the direction; and the principal Act shall be construed as if it had, at the time at which the direction takes effect, been enacted with that addition, substitution or omission.

(4) A reference in any enactment, whether passed before or after the commencement of this Act, to the principal Act shall, unless the context otherwise requires, be construed to refer to that Act as amended by any enactment for the time being in force.

SCHEDULES.

FIRST SCHEDULE.

FURTHER AMENDMENTS OF THE GOVERNMENT OF INDIA ACT, 1915.

Enactment to be amended.	Amendment.
The Government of India Act, 1915 (5 & 6 Geo. 5, c. 61). Section 3 (3) ...	The word "British," where secondly occurring, shall be repealed.
Section 13 (1)...	For this sub-section shall be substituted the following sub-section :— “(1) Where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and a majority of votes therefor at a meeting of the Council of India is not required by this Act, the Secretary of State may send the order or communication to the Governor-General in Council or to any Governor in Council or officer or servant in India without submitting it to a meeting of the council or depositing it for the perusal of the members of the council or sending or giving notice of the reasons for making it, if he considers that it is of a nature to require secrecy.”
Section 13 (2)...	The words “or any of the matters aforesaid” shall be substituted for the words “or the levying of war, or the making of peace, or negotiations or treaties with any prince or state.”
Section 21 ...	At the end of this section shall be added the words “Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the council shall be deemed to be made with the concurrence of a majority of such votes.”
Section 26 ...	The words “twenty-eight days” shall be substituted for the words “fourteen days.”

Enactment to be amended.	Amendment.
Section 27 (10)	The words "or retiring" shall be inserted after the word "superannuation"; the words "and their legal personal representatives shall, for the purposes of gratuity" shall be inserted after the word "allowance"; and the words "the auditor and his assistants" shall be substituted for the word "they."
Sections 28 (1) and 30 (1).	The words "or personal" shall be inserted after the word "real," where secondly occurring, and the words "or otherwise" shall be inserted after the word "mortgage."
Section 28 (2) ...	The word "two" shall be substituted for the word "three."
Sections 63 (3) and 74 (2).	The words "any office of profit" shall be substituted for the word "office."
Sections 64 (3), 75 (3) and 78 (2).	The words "or when questions are asked" shall be inserted after the words "any matter of general public interest."
Sections 67 (3) and 80 (3).	The words "or when questions are asked" shall be inserted after the words "at any such discussion."
Section 86 (1) ...	The words "and a Lieutenant-Governor in Council" shall be inserted after the words "a Governor in Council."
Section 92 (3) ...	The words "or special duty" shall be inserted after the words "is absent on leave."
Section 94 ...	The words "or special duty" shall be inserted after the words "absence on leave," and the words "absence may be permitted" shall be substituted for the words "leave may be granted."
Section 99 (1) ...	The words "in British India," where secondly occurring, shall be repealed.
Section 106 ...	In this section shall be inserted the following subsection :— "(1 A) The letters patent establishing, or vesting jurisdiction, powers or authority in, a high court may be amended from time to time by His Majesty by further letters patent."
Section 107, proviso.	The word "law" shall be substituted for the word "Act."
Section 109 (1) ...	The words "any British subject for the time being within" shall be substituted for the words "Christian subjects of His Majesty resident in."

Enactment to be amended.	Amendment.
Section 110 (1) ...	The words "lieutenant-governor and chief commissioner" shall be inserted after the words "each governor," and the words "the executive council of the governor-general or of a governor or lieutenant-governor" shall be substituted for the words "their respective executive councils."
Section 114 ...	At the end of this section shall be added the following sub-section :— “(3) On the occurrence of a vacancy in the office of advocate-general, or during any absence or deputation of an advocate-general, the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as advocate-general ; and the person so appointed may exercise the powers of an advocate-general until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the advocate-general has returned from his absence or deputation, as the case may be, or until the Governor-General in Council or the local Government, as the case may be, cancels the acting appointment.”
Section 120 ...	The words "Secretary of State" shall be substituted for the words "Chancellor of the Exchequer" ; the words "Madras or Bombay" shall be inserted after the words "Bishop of Calcutta." where thirdly and fourthly occurring ; and the words "to be paid quarterly" and the word "British" shall be repealed.

For the Fifth Schedule shall be substituted the following :—

"FIFTH SCHEDULE.

Section 131 (3).

Provisions of this Act which may be repealed or altered by the Governor-General in Legislative Council.

Section.	Subject.
62	Power to extend limits of presidency towns.
106	Jurisdiction, powers and authority of high courts.
108 (1)	Exercise of jurisdiction of high court by single Judges or division courts.

Section.	Subject.
109	Power for Governor-General in Council to alter local limits of jurisdiction of high courts, &c.
110	Exemption from jurisdiction of high courts.
111	Written order by Governor-General in Council a justification for act in high court.
112	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2)	Powers of advocate-general.
124 (1)	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the governor-general, a governor, or a member of the executive council of governor-general or of a governor.	Receiving presents.
125	Loans to princes or chiefs.
126	Carrying on dangerous correspondence.
128	Limitation for prosecutions in British India.
129	Penalties."

**SECOND SCHEDULE.***Section 7 (2).***Enactments repealed.**

Session and Chapter.	Short Title.	Extent of Repeal.
13 Geo. 3, c. 63 ...	The East India Company Act, 1772.	Sections forty-two, forty-three and forty-five.
24 Geo. 3, sess. 2, c. 25.	The East India Company Act, 1784.	The whole Act.
26 Geo. 3, c. 57 ...	The East India Company Act, 1786.	The whole Act.
9 Geo. 4, c. 74 ...	The Criminal Law (India) Act, 1828.	Section fifty-six, except so far as in force in the Straits Settlements.
5 & 6 Geo. 5, c. 61 ...	The Government of India Act, 1915.	In section twenty-six, paragraph (d). In section eighty-seven, sub-sections (2), (3), (4), and (5). Section one hundred and sixteen.



INDEX.

N. B.—The figures (1, 2, etc.) indicate the pages of the Act and the others (i, ii, etc.) indicate the pages of the Introduction.

A

ACCOUNTS—

Audit of Indian—in England [27] ...	20
—of Secretary of State to be annually laid before Parliament [26] ...	19

ACTS—

—of Settlement ...	iii
Authentic copies of—to be sent to Governor-General for assent [81 (3)]	47
—disallowed by Crown becomes void [69 (1)]...	39
—have no effect when Governor-General, Governor or Lieutenant Governor withholds assent [81]...	47
—of local legislatures do not become law unless they have been assented to by Governor-General and published [81 (3)]	47
—of local legislatures may be disallowed by the Crown [82]	47
—when disallowed by Crown becomes void [82 (2)]	47
—of local legislatures of Governors and Lieutenant Governors to be assented to by Governor or Lieutenant Governor [81]	47
—of Parliament, local legislatures have no power to make any law affecting [79 (4)]	46
Power of Crown to disallow—[69 (1), 82 (1)]	39, 47
Repeal of—[130]	71, 74, 85

ACTIONS AGAINST SECRETARY OF STATE IN COUNCILxxviii
---	-----------

ADDITIONAL HIGH COURT. *See* HIGH COURT.

ADMINISTRATIVE BOARDS ...	xiii
---------------------------	------

ADVOCATE GENERAL—

Appointment and powers of—[114]	63
Vacancy in the office of the—[114 (3)]	64

AGENCY

doctrine of—... ..	xiv
--------------------	-----

AGRA, PROVINCE OF—

Constitution of a Presidency for the— [52] ...	31
--	----

AMENDMENT OF THE ACT OF 1915 ...	82, 83
----------------------------------	--------

ANNUAL FINANCIAL STATEMENT—

Discussion of— ...	lxvii
Power to make and amend rules for discussion of—in legislative Councils [80 (3)]	46

ANSWERS. *See* Questions.

APPOINTMENTS IN INDIA—

Conditional—in absence of Governor-General or Governor [88] ...	50
Rules as to—in offices under the Crown in India [95] ...	54

APPOINTMENTS—

No disabilities as to—in respect of religion &c.	[96]	...	...	55
Subjects of other State, eligible for—in India	[96 A]	...	...	55
Rules as to—to be made by Secretary of State	[97]	...	...	15
—of Governors of Bengal, Madras and Bombay	[46 (2)]	...	...	29
—of Judges of High Courts	...	...	...	...
—of auditor to check Indian accounts	[27]	...	...	20

ARCHDEACONS—

Salaries and allowance of—of Bombay and Calcutta	[118]	...	65
--	-------	-----	----

ASSENT

—of Governor to laws passed by the Bengal Legislative Council.	[81]	47
—of Governor General to laws passed by local legislatures	[81]	47

AUDIT—

—of Indian accounts in England	[27]	...	20
--------------------------------	------	-----	----

B

BISHOPS—

Jurisdiction of Indian—	[115]	...	64
Consecration of persons resident in India appointed as—	[116]	...	65
Furlough rules of—	[121]	...	See Act.
Payments to representatives of—	[119]	...	65
Pensions to—	[120]	...	66
Salaries and allowances to—	[118]	...	65

BILL OF RIGHTS—

...	iii
-----	-----	-----	-----

BOMBAY—

Limits of the town of— may be extended by Governor in Council	[62]	34
---	------	----

BOUNDARIES—

Power of Governor General to declare and alter the— of any province	[60]	...	33
---	------	-----	----

BRITISH INDIA AS DISTINGUISHED FROM INDIA—

...	...	ii
-----	-----	----

BUDGET—

Resolutions on—	...	...	lxix, lxx
Passing of—	...	...	lxix

C

CABINET—

What is—	...	...	ix
—and ministry, distinction between,	...	...	x
War—	...	...	x
Pre-war—	...	...	xi
Is the Governor General's Council a—?	...	...	xl

CALCUTTA—

limits of town of—may be extended by Governor in Council.	[62]	...	34
---	------	-----	----

CANTERBURY—

Archbishop of—exercises superintendence and revision over Bishop of Calcutta [115 (2)]	64
--	-----	-----	-----	----

CHARTERS AND ACTS OF INDIAN JUDICIARY—

Charter—of 1661	}		
„ —of 1683			
„ —of 1687			
„ —of 1726			lxxviii
„ —of 1753			
Regulating Act of 1773			
„ Act of 1800	}		
„ Act of 1861			lxxx
„ Act of 1911			

CHAPLAINS—

Establishment of—of Church of Scotland [122]	66
--	-----	-----	----

CONSTITUTION—

Flexible and Rigid—	...	...	...	i
Nature of the English—	...	...	...	iii
—of British India.	...	...	...	ii
—of Viceroy's Council	...	...	...	xxxvi
What is—	...	...	...	i

CORRESPONDENCE—

—between Governor-General and Secretary of State [16]...	xxxv,	14
Carrying on dangerous—[126]	...	69

CIVIL SERVICE—

See Indian Civil Service.

CHIEF COMMISSIONER—

What provinces are governed by—s. [58]	...	...	33
—s. assent is necessary to Acts passed by his legislature [81]	...	...	47
—is exempt from jurisdiction of High Court. [110]	...	...	62

COMMONS—

House of—	xvi
-----------	-----	-----	-----	-----

COUNCIL—

Business of Governor-General's— [40]	...	...	26
Business of Governor's— [49]	...	...	30
Business of Lieutenant Governor's— [57]	...	...	33
Difference of opinion in Governor-General's— [41]	...	...	26
Difference of opinion in Governor's— [50]	...	...	30
Viceroy's—	...	...	xxxvi

COUNCIL OF INDIA (SECRETARY OF STATE'S COUNCIL)—

Constitution of— [3]	...	...	xxv,	10
Duties of— [5]	...	...	...	11
Powers of— [6]	...	...	...	11
Meetings of— [8]	...	...	...	12
Committees of— [10]	...	...	...	12
Orders and communications of—to India [11]	...	...	...	12, 13
Procedure at meeting of the— [9]	...	...	...	12

CROWN—

The—	...	...	...	...	xxii
Power of the—to disallow Acts passed in India [69 (1), 82]	...	...	...	...	39, 47
Power of the—	...	...	...	...	xxii
Power of the—to establish additional High Court [113]	...	...	...	...	63
Power of the—to appoint Advocate General. [114]	...	...	...	...	63
Government of India by the— [1]...	...	...	...	...	9
Laws affecting prerogative of the—not deemed invalid [84]	...	...	...	...	48

CHRISTIANS—

Saving as to grants to—[123]	67
------------------------------	-----	-----	-----	-----	----

COMMANDER-IN-CHIEF—

Departure from India of—except under certain conditions, renders office vacant [87]	...	...	...	...	50
May be appointed member of Governor General's executive council [37]	...	...	...	...	25
—to be a member of the executive council of Governor in certain cases [47 (3)]	...	...	...	...	30

D

DESPATCHES FROM INDIA—

—to be addressed to Secretary of State [14]	14
---	-----	-----	-----	-----	----

DEFINITIONS [134]	72
-------------------	-----	-----	-----	-----	----

E

EAST INDIA COMPANY—

Orders of— [133]	...	...	...	...	72
Savings of treaties, contracts and liabilities of— [132]	...	...	...	...	71

ELECTED MEMBERS—

Maximum number of—	73
--------------------	-----	-----	-----	-----	----

EUROPEAN BRITISH SUBJECTS—

Laws affecting—not deemed invalid [84 (c)]	...	...	...	...	48
Punishment by death of—[65 (3)]	...	...	...	...	37

ENGLISH CONSTITUTION, NATURE OF,...	iii
-------------------------------------	-----	-----	-----	-----	-----

„ POLITICAL PARTIES	...	...	...	...	xx
„ JUDICIAL SYSTEM	...	...	...	...	xxi

EXECUTIVE COUNCIL—

Members of—exempt from jurisdiction of High Court [110]	...	...	...	...	62
Appointment of members of—of Governors of Bengal, Bombay and Madras may be revoked or suspended by Secretary of State [46(3)]...	...	...	...	...	29
—of Governor General [35]	...	...	...	...	24
Power to create—of Lieutenant Governor [55]	...	...	...	...	32

EXECUTIVE COUNCIL OF GOVERNOR-GENERAL—

Appointment of ordinary members of— [36]	...	...	...	...	25
... of Vice-president of— [38]	...	...	...	...	25
Commander-in-chief may be appointed a member of— [37]	...	...	...	...	25
Constitution of the— [35]	...	...	...	...	24

Departure of member of—from India, except under certain conditions, renders office vacant [87] ...	...	...	50
Conditional appointments of persons to office of member of—[88] ...	...	...	50
Leave of absence of member of— [86] ...	...	...	50
—meets in such place as the Governor-General appoints [39] ...	...	...	25
Procedure in case of difference of opinions in— [41] ...	...	...	26
Provision for absence from meetings of,— [42]...	...	...	26
Rules and orders for transaction of business in—made by Governor-General [40] ...	...	...	26
Temporary Vacancy in— [92] ...	...	...	52
EXECUTIVE COUNCIL OF GOVERNORS.—			
Appointment of — [47 (i)] ...	...	...	29
„ „ Vice-president of — [48] ...	...	...	30
Conditional appointments of persons to office of member of — [88] ...	...	...	50
Departure of member of — from Presidency, except under certain conditions, renders office vacant [87] ...	...	...	50
Commander-in-Chief to be member in certain cases [47 (3)] ...	...	...	30
Procedure in case of difference of opinion in — [50] ...	...	...	30
Provision for absence of Governor from meetings of — [51] ...	...	...	31
Qualification of Members of the—[47 (2)] ...	...	...	29
Rules and orders for transaction of business of—to be made by Governor [49 (2)] ...	...	...	30
Temporary Vacancy in— [92] ...	...	...	52
EXECUTIVE COUNCIL OF LIEUTENANT-GOVERNORS.—			
Governor-General in Council has Power to create — [55] ...	...	...	32
Appointment of members of — [55 (3)] ...	...	...	32
Appointment of Vice-President of — [56] ...	...	...	32

F

FINANCE MEMBER	xxxviii
FINANCIAL STATEMENT.—	
Discussion of — in local legislatures [80(3)] ...	46
First Lord of the Treasury, ...	xi
Discussion of—in Governor General's Council	lxvii, lxviii
„ „—matters of general public interest on	lxx

FOREIGN PRINCES OR STATES—

Local legislature cannot take into consideration any law affecting relations of — without previous sanction of Governor-General [79 (3) (h)] ...	46
--	----

G

GOVERNOR GENERAL.—

His position and power ...	xxxiii
His Council ...	xxxvi
Constitution of his Council ...	xxxvi
Functions of his Council ...	xl
Appointment of — [34] ...	24
„ „ ordinary members of —'s Council [36] ...	25
—appoints times and places of meetings of his executive Council [39]...	25
—appoints Vice-president of his executive Council [38] ...	25

Assent of — to Acts of Indian legislative Council [68] ...	39
Commander-in-Chief may be appointed member of executive Council of — [37] ...	25
Conditional appointment to the office of — [88] ...	50
Constitution of executive Council of — [35] ...	24
Departure from India of — except under certain conditions, renders office vacant [87] ...	50
Exemption from Jurisdiction of High Court [110] ...	62
—makes rules and orders for transaction of business in his Council [40] ...	26
For transaction of business in his executive Council [40] ...	26
Forms of communication between—and the Secretary of State ...	xxxiv
—may declare seat of Member of Indian Legislative Council vacant if such member is absent from India for more than two months [93] ...	54
—may withhold assent to Acts of local legislatures [81 (4)] ...	47
Number of ordinary members of the Executive Council of the—[36 (2)] ...	25
Order of — is a justification in certain Civil and Criminal proceedings [110] ...	62
Ordinary Member of the Executive Council of — not to hold any military commands [36 (4)] ...	25
Powers of — when absent from Council [43] ...	27
Power of — to make ordinances [72] ...	40
Power of — to dispose of escheated property [31] ...	23
Powers for — to exercise powers before taking seat [89] ...	51
Previous sanction of — required in certain cases before legislation is undertaken in local legislature [79] ...	45
Procedure in case of difference of opinion in Executive Council of— [41] ...	26
Provision for absence of — from meetings of his Executive Council [42] ...	26
Qualification of ordinary members of the Executive Council of the—[36(3)] ...	25
Salary of — [85(1)] ...	49
Temporary vacancy in the office of —[90] ...	51

GOVERNOR-GENERAL'S EXECUTIVE COUNCIL.—

Its constitution ...	xxxvi to xl
Functions of— ...	xl

GOVERNOR-GENERAL IN COUNCIL.—

—appoints time and places for meeting of Indian legislative Council [64] ...	35
—declares and limits the extent and authority of Lieutenant-Governors [54 (3)] ...	32
Definition of — [134 (1)] ...	72
General powers and duties of — [33] ...	24
— has power to alter local limits of jurisdiction of High Courts [109] ...	61
— has power to constitute new local legislatures [77] ...	44
— has power to create executive councils of Lieutenant-Governors [55] ...	32
— has power to declare and alter boundaries of provinces [60] ...	33
— has power to place any part of British India under his immediate authority [59] ...	33
— has power to place any part of British India under the authority of a Chief Commissioner [59] ...	33
—makes rules for election and nomination to Indian Legislative Council [63 (6)] ...	35
— makes rules for the nomination and election of members to local	

INDEX.

93

Legislative Councils [74(4)]	...	...	...	...	42
—makes rules under which persons may be nominated or elected to Legislative Councils of Lieutenant-Governors [76 (3)]	...	...	...	...	43
—may appoint additional Judges to High Courts [101]	...	...	...	...	57
—may constitute a new province under a Lieutenant-Governor [53 (2)]	...	...	...	...	31
Powers of — in absence of Council [43]	...	...	...	...	27
Powers of—to dispose of escheated Property [31]	...	...	...	...	23
Powers of—to execute assurances &c. in India in name of Secretary of State [30]	...	...	...	...	23
Power of—to make regulations having the like force as law [71 (2)]	...	...	...	...	40
—makes rules for the discussion of the Financial Statement, asking of questions and moving of resolutions in the Indian Legislative Council [67 (3)]	...	...	...	...	38
Relations of local Government to—[45]	...	...	...	...	28
Restriction on powers of—to make war or treaty [44]	...	...	...	...	27
—to send all advices or intelligence constantly to Secretary of State [16]	...	...	...	...	14

GOVERNOR-GENERAL IN LEGISLATIVE COUNCIL—

See Indian Legislative Council.

GOVERNOR—

—adjourns meetings of his Legislative Council [75 (2)]	...	...	...	...	42
—appoints time and place of meetings of his Legislative Council. [75 (1)]	...	...	...	...	42
Conditional appointment to office of— [88]	...	...	...	...	50
Departure from Presidency of—except under certain conditions, renders office vacant. [87]	...	...	...	...	50
Exemption of—from jurisdiction of High Court [110]	...	...	...	...	62
—first appointed, acts as Governor-General during temporary vacancy in the office of Governor-General [90]	...	...	...	...	51
In absence of—Vice President presides at meetings of Legislative Council [75 (3)]	...	...	...	...	42
—makes rules and orders for transactions of business in Executive Council [49 (2)]	...	...	...	...	30
—may declare seat of member of local Legislative Council vacant if such member is absent from India for more than two months [93]	...	...	...	...	54
Temporary vacancy in office of—[91]	...	...	...	...	52

GOVERNOR IN COUNCIL—

Definition of—[134 (2)]	...	...	...	...	72
—may extend boundaries of Presidency towns. [62]	...	...	...	...	34
Orders and Proceedings of—to be expressly made by—[49]	...	...	...	...	30
Orders and Proceedings of—to be signed by a Secretary to Government [49]	...	...	...	...	30
Power to execute assurances &c. in India in the name of Secretary of State [30]	...	...	...	...	23
Provision for absence of Governor from meetings of Executive Council of—[51]	...	...	...	...	31

GOVERNOR OF BENGAL

Appointment of—[46 (2)]...	29
----------------------------	-----	-----	-----	-----	----

GOVERNORS OF BOMBAY AND MADRAS

Appointment of—[46 (2)]	29
-------------------------	-----	-----	-----	-----	----

GOVERNMENT OF INDIA—

—Act, provisions which can be repealed or altered by Governor—				
General in Legislative Council ...	...	...	...	...76, 84
Amendment of—Act ...	...	...	...	...77, 82
Function of the— ...	...	...	...	... xliii
Financial control of the Secretary of State over the— ...	...	...	...	... xlvii
General relation of—with the Provincial Government ...	...	...	...	... xlix
— how business of the—is transacted ...	...	...	...	... xli
Is the—synonymous with Government by the Viceroy ...	...	...	...	... xlii
What is— ...	...	...	...	... xxxvi

H

HIGH COURT—

See Indian High Courts.

Power to establish additional—[113] ...	...	...	...	... 63
HABEAS CORPUS ...	...	...	...	... iii
HOUSE OF LORDS ...	...	...	...	... xvi
HOUSE OF COMMONS ...	...	...	...	... xvi
Privileges of members of— ...	...	...	...	... xviii

HOSTILITIES—

Orders for commencement of—to be communicated to Parliament [15]				14
--	--	--	--	----

I

INDIAN APPOINTMENT—

Rules as to the making of—[95]
------------------------------------	-----	-----	-----	-----

INDIAN BISHOPS *See* Bishop.

INDIAN CIVIL SERVICE—

Offices reserved for—[98] ...	...	...	...	56, 73
Power to appoint certain persons to offices reserved for the—[99] ...	...	...	...	56
Power to make provisional appointment in certain cases [100] ...	...	...	...	57
Rules for admission to—[97] ...	...	...	...	55

INDIAN HIGH COURTS—

Constitution of—[101] ...	...	...	...	57
Exemption of Governor-General and certain other persons from jurisdiction of—[110] ...	...	...	...	62
Exercise of jurisdiction by single judges or division courts. [108] ...	...	...	...	61
Jurisdiction of—[106] ...	...	...	...	60
Powers of—with respect to Subordinate Courts [107] ...	...	...	...	60
Powers of Governor-General in Council to alter local limits of Jurisdiction of—[109] ...	...	...	...	61
Precedence of judges of—[103] ...	...	...	...	58
Provision for vacancy in the office of Chief Justice or other judge of—[105] ...	...	...	...	59
Qualification for judge of—[101 (3)] ...	...	...	...	58
Salaries, leave &c. of judges of—[104] ...	...	...	...	59
Tenure of office of judges of—[102] ...	...	...	...	58
Written order by Governor-General, justification for any act in—[111]				62

INDIAN LAWS—

Removal of doubt to validity of certain— 78

INDIAN LEGISLATURES.—*See* Legislatures.

INDIAN LEGISLATIVE COUNCIL—

Acts of the—to be assented to by Governor General before they have validity [68] 39
 Asking of questions in the—[67 (3)] 38
 Business at meetings of the—[67] 38
 Constitution of the—[63] 34
 Discussion of the financial statement in the—[67 (3)] lxvii, 38
 Discussion of matter of General public interest in the—[67 (3)] 38
 Election of members to the—[63 (6)] 35
 —has no power to alter rules for discussion of financial statement, moving of resolutions and asking of questions, in Local Legislatures [80 (3)] 46
 —cannot make any laws affecting the authority of Parliament [65(2)]... .. 36
 —has power to alter its rules for conduct of business [70] 39
 Functions of the—
 (i) Legislative— lxii
 (ii) Deliberative— lxvii
 (iii) Interrogatory— lxx
 Legislative powers of the—[65] 36
 Meeting of the—[64] 35
 Members of the—who absented from India for more than two months considered to have vacated their seats at—[93 (2)] 54
 Rulers or subjects of any state of India may be nominated or elected to—[63 (6B)] 35
 Resignation of members of the—[93] 54
 Rules for conduct of business in the—[70] 39
 Stages of legislation in the— lxv
 Quorum for meeting of the— lxvi
 Veto on Acts passed by the— lxvi

J

JUDICIAL SYSTEM—

The English— xxi

JUDICIARY, INDIAN—

Leading stages in the evolution of the— lxxvii
 —of to-day lxxxi

L

LOCAL LEGISLATURES—

Asking of questions in—[80 (3)] 46
 —cannot alter the Indian Penal Code without previous sanction of Governor-General—[79 (3) (d)] 45
 Discussion in—on matters of general public interest. [80 (3)] 46

LEGISLATIVE COUNCIL OF THE GOVERNOR GENERAL—

See Indian Legislative Council

LEGISLATIVE COUNCIL OF GOVERNOR OF BENGAL—

See Local Legislatures of Governors.

LEGISLATIVE COUNCIL OF GOVERNOR OF BOMBAY.

See Local Legislatures of Governors.

LEGISLATIVE COUNCIL OF GOVERNOR OF MADRAS—

See Local Legislatures of Governors.

LEGISLATURES, INDIAN—

Some Noticeable Features of—	...	...	...	lxxiii
(1) their non-sovereign character—	...	...	...	lxxiv
(2) official and non-official elements—	...	...	...	lxxv
(3) their unicameral nature—	...	...	...	lxxvii
Land-marks in the evolution of—	...	...	...	lvii

LOCAL LEGISLATURES OF GOVERNORS—

Acts of—to be assented to by Governor [81]	...	...	47
Additional members of—not entitled to be present at meetings of executive council of—[74 (3)]	...	...	42
Adjournment of meetings of—made by Governor [75 (2)]	...	...	42
Assent to Acts of—[81]	...	...	47
Constitution of—[73, 74]	...	...	lxxi, 41
Discussion of Annual Financial Statement in—[80 (3)]	...	...	46
In the absence of Governor, Vice-President presides at meetings of—[75 (3)]	...	...	42
—may alter the rules of business of Legislative Councils—[83 (2)]	...	...	48
—meet at times and places that the Lieutenant Governor appoints [75]	...	...	42
Members of—absent from India for more than two months may be held to have vacated their seats [93 (2)]	...	...	54
Members of—cannot introduce any measure affecting public revenues without previous sanction of governor [80 (2)]	...	...	46
Powers of—[79]	...	...	lxxii, 45
Qualifications of members of—[74]	...	...	41
Rulers or subjects of any state in India may be nominated or elected to—[74 (4B)]	...	...	42
Rules of nomination and election of members to—not subject to alteration by the Governor-General in Council [74 (5)]	...	...	42
Rules for nomination and election of members to be made by Governor-General in Council [74 (4)]	...	...	42

LOCAL LEGISLATURES OF LIEUTENANT GOVERNORS—

Acts of—to be assented to by Lieutenant Governor [81]	...	...	47
Assent to Acts of—[81]	...	...	47
Constitution of—[76]	...	...	43
Discussion of Annual Financial Statement, asking of questions and moving of resolutions in—[80 (3)]	...	...	43
—may alter the rules of Legislative business of—[83 (2)]	...	...	48
Members of—absent from India for more than two months may be held to have vacated their seats—[93 (2)]	...	...	54
Members of—cannot introduce any measure affecting public revenues without previous sanction of Lieutenant Governor. [80 (2)]	...	...	46
Powers of [79]	...	...	45
Power of the Crown to disallow Acts of—[82]	...	...	47
Rulers or subjects of any state in India may be nominated or elected to—[76 3B)]	...	...	44

LIEUTENANT GOVERNORS—

Appointment of—[54]	...	...	31
Appointment of Vice-President of executive council of—[56]	...	...	32

INDEX.

97

Authority of—declared and limited by Governor-General in Council.	
[54 (3)]	32
—makes rules and orders for more convenient transaction of business in his executive council [57]	33
—may declare seat of members of Local Legislative Council vacant if such member is absent from India for more than two months [93 (2)]	54
Qualification of—[54 (2)]	31
LIEUTENANT GOVERNOR IN COUNCIL—	
Definition of—[134 (3)]	72
LOANS TO PRINCES AND CHIEFS—	
Restrictions as to—[125]	68
LORDS—	
House of—	xvi

M

MADRAS—	
Appointment of Governor of—[46 (2)]	29
Limits of the town of—may be extended by Governor in Council [62]	34
Legislative Council of Governor of—See Local Legislature of Governor	
MADRAS HIGH COURT—	
Law to be administered in cases of inheritance and succession. [112]	63
MAN ON THE SPOT THEORY	xlv
MINISTRY—	ix
Relations of the—to the Crown	xiv
MISDEMEANOURS—	
Certain act to be—[124]	67

N

NATIVES OF BRITISH INDIA—	
Not disabled from holding office under the Crown in India [96]	55
NAVAL MILITARY FORCES—	
Local Legislatures cannot take into consideration any law affecting discipline of His Majesty's—without previous sanction of Governor-General. [79 (3) (f)]	46
NOMINATED MEMBERS—	
Maximum number of—	73

O

OFFENCE	
Prosecution of—in England. [127]... ..	70
OFFICIALS AND NON-OFFICIALS IN LEGISLATIVE COUNCILS	lxxv
OFFICE	
Definition of—[134 (5)]	72
—is reserved to the Indian Civil service	73
ORDINANCES—	
Power of Governor-General to make—[72]	40

P

PARLIAMENT—

British—	...	...	...	...	xv
Account of Secretary of State to be annually laid before—	[26]	...	...	...	19
Communication to—as to orders for commencing hostilities.	[15]	...	...	...	14
Local Legislatures cannot make any law affecting any act of—	[79 (4)]	...	...	...	46
Rules for nomination and election of member to Local Legislative Councils to be laid before—	[74 (5)]	...	...	...	42
Privileges of members of—	...	...	...	...	xviii
Functions of—	...	...	...	...	xix
Control of—over Indian affairs	...	...	...	...	xxix

PARTIES—

English political—	xx
--------------------	-----	-----	-----	-----	----

PATENTS OR COPYRIGHT—

Local Legislatures cannot take into consideration any law regulating — without previous sanction of Governor-General	[79 (3) (g)]	46
--	--------------	-----	-----	-----	----

POST OFFICE.—

Previous sanction of the Governor-General required to the making or taking into consideration of any laws affecting the —	[79 (3) (c)]	45
---	--------------	-----	-----	-----	----

PREROGATIVE OF THE CROWN—

Laws affecting — not deemed invalid	[84]	48
-------------------------------------	------	-----	-----	-----	----

PRESENTS, RECEIVING.—

— is an act of misdemeanour	[124 (5)]	68
-----------------------------	-----------	-----	-----	-----	----

PRESIDENT.—

At meetings of Indian Legislative Council—has casting vote.	[64 (4)]	...	...	...	36
At meeting of Local Legislatures of Governors has casting vote	[75 (4)]	...	...	...	43

PRINCES AND CHIEFS.—

Restrictions of loans to—	[125]	68
---------------------------	-------	-----	-----	-----	----

PRIVY COUNCIL

Judicial Committee of the—	vi, lxxxi
----------------------------	-----	-----	-----	-----	-----------

PROCLAMATIONS ISSUED BY THE CROWN

...	v
-----	-----	-----	-----	-----	---

PROSECUTION OF OFFENCES IN ENGLAND [127]

...	70
-----	-----	-----	-----	-----	----

" " " " BRITISH INDIA, LIMITATION FOR, [128]	70
--	-----	-----	-----	-----	----

PROVINCE.—

Definition of—	[134 (6)]	172
----------------	-----------	-----	-----	-----	-----

PROVINCIAL GOVERNMENTS—

Organization of—and their general relations with the Government of India	xlix
--	-----	-----	-----	-----	------

PUBLIC DEBT OF INDIA.—

Local legislature cannot take into consideration any law affecting — without sanction of Governor-General	[79 (3) (a)]	45
---	--------------	-----	-----	-----	----

PUBLIC REVENUES.—

Previous sanction of Governor required to introduction in Council of measure affecting —	[80 (2)]	46
--	----------	-----	-----	-----	----

Q

QUESTIONS.—

Asking of — in local legislature	[80 (3)]	46
----------------------------------	----------	-----	-----	-----	----

R

REGULATIONS MADE UNDER THE GOVERNMENT OF INDIA ACT HAVE THE LIKE FORCE OF LAW [71 (2)]	40
RELIGION.—				
Previous sanction of Governor-General required to the making or taking into consideration of any laws affecting—[79 (3) (e)]	...	...	...	45
RESOLUTIONS.—				
Discussion of — in local legislatures [80 (3)]	...	...	...	46
REVENUES OF INDIA.—				
Application of the — [20]	...	...	...	15
Control by Secretary of State of the — [21]	...	...	...	16
Definition of the—[20 (3)]	...	...	...	16
—not to be applied to military operations beyond the frontier [22]	...	...	...	17
Such parts of—remitted to England, to be kept in Bank of England [23]	...	...	...	17
—liable for the acts or defaults of the servants of Government of India.	...	...	...	xxviii
ROYAL INDIAN MARINE SERVICE.—				
Laws for the — [66]	...	...	...	37
RULERS OR SUBJECTS OF ANY STATE IN INDIA.—				
Appointment of — to Civil military offices under the Crown 96 [A]	...	...	...	55
Eligible for nomination or election to Indian Legislative Councils or Local Legislatures [63 (6 B) ; 74 (4 B) ; 76 (3 B)].	...	...	...	35, 42, 44
Qualification of—for office	...	...	...	79

S

SALARIES.—				
—of officials	...	...	...	72
SECRET ORDERS AND DESPATCHES [13]	...	...	...	13
SECRETARY OF STATE.—				
The position and powers of—	...	...	...	xxiii
—and his Council	...	...	...	xxv
—in Council	...	...	...	xxvi
Accounts of — kept in Bank of England [23]	...	...	...	17
Accounts to be annually laid before Parliament by—[26]	...	...	...	19
Control of — over Revenues of India. [21]	...	...	...	16
Despatches to be addressed to— [14]	...	...	...	14
Disposal of securities held in trust for—[25]	...	...	...	19
Establishment of the—[17]	...	...	...	14
Financial Control of the — over Government of India	...	...	...	xxvii
—fixes salaries and the Judges of Indian High Courts [104]	...	...	...	59
Governor General in Council to send all advices or intelligence constantly to the—[16]	...	...	...	14
—makes rules as to the absence on leave of persons in the service of the Crown in India. [94]	...	...	...	54
—make rules for admission to the Indian Civil Service [97]	...	...	...	55
—may appoint Commander-in-chief a member of Governor General's Executive Council [37]	...	...	...	25
—may suspend or revoke appointment of Executive Council of Governor of Bengal, Bombay and Madras [46 (3)]	...	...	...	29
—not personally liable in respect of any assurance or contract [32 (4)]	...	...	...	24

Pensions and gratuities to officers and servants in the establishments of the— [18]	15
Powers and duties of the—[2]	9
Power of attorney of the—for sale or purchase of stock and receipts of dividends [24]	18
Power of the—to sell mortgage and buy property [28]	21
Contracts of the— [29]... ..	22
Relation between Viceroy and —	xliv
Rights and liabilities of the—[32]	23
— to make appointments in India [19]	15
— to produce and lay before auditors all accounts [27]	20
SECRETARY OF STATE IN COUNCIL. <i>See</i> Secretary of State.	
SOVEREIGN	iv
STOCK—	
Transfer of India—by deed [24]	18
T	
TELEGRAPH, ELECTRIC.—	
Local legislature cannot take into consideration any law regulating conveyance of any message by,—without previous sanction of Governor General [79 (3) (c)]	45
TREATY.	
Restriction on powers of Governor General in Council to make war or— [44]... ..	27
V	
VALIDITY OF INDIAN LAWS—	
Removal of doubts as to— [84]	48
VALIDITY OF ORDERS IN COUNCIL	
—under Foreign Jurisdiction	80
VICE-PRESIDENT OF GOVERNOR GENERAL'S EXECUTIVE COUNCIL—	
Appointment of— [38]	25
—acts in temporary vacancy in office of Governor [91]	
Presides at meetings of Indian Legislative Council in absence of Governor General [64 (3)]	52
VICE-PRESIDENT OF EXECUTIVE COUNCIL OF GOVERNOR.	
— acts in temporary vacancy in office of Governor [91]	52
Appointment of— [48]	30
VICE PRESIDENT OF LOCAL LEGISLATURES OF GOVERNOR	
—presides in absence of Governors [75 (3)]	42
VICE-PRESIDENT OF EXECUTIVE COUNCIL OF LIEUTENANT GOVERNOR	
Appointment of— [56]... ..	32
VICE-PRESIDENT OF LOCAL LEGISLATURES OF LIEUTENANT GOVERNORS.	
Appointment of— [78]... ..	44
VICEROY	
His position and powers	xxxiii
His Council	xxxxi
Relation between—and the Secretary of State	xliv

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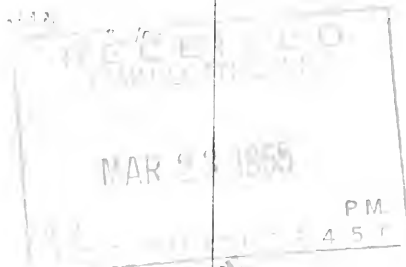


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